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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–1004; Directorate Identifier 2009–NE–36–AD; Amendment 39–16239; AD 2010–06–14]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During 2004, an incident was reported involving uncontained multiple intermediate-pressure (IP) turbine blade release on a Trent 700 engine. The blade release was the result of an overspeed of the IP turbine rotor that was initiated by an internal fire in the high-pressure/intermediate-pressure (HP/IP) bearing chamber. Post-incident analysis and investigation has established that blockage of the HP/IP turbine bearing oil vent tube due to carbon deposits was a significant factor in the failure sequence. The Trent 800 has a similar type design standard to that of the Trent 700 and has also been found in service to be susceptible to carbon deposits in the oil vent tube.

We are issuing this AD to prevent internal oil fires due to coking and carbon buildup in the HP/IP turbine bearing oil vent tube that could cause uncontained engine failure and damage to the airplane.

DATES: This AD becomes effective May 3, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 3, 2010.

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on January 5, 2010 (75 FR 264). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During 2004, an incident was reported involving uncontained multiple IP turbine blade release on a Trent 700 engine. The blade release was the result of an overspeed of the IP turbine rotor that was initiated by an internal fire in the HP/IP bearing chamber. Post-incident analysis and investigation has established that blockage of the HP/IP turbine bearing oil vent tube due to carbon deposits was a significant factor in the failure sequence. The Trent 800 has a similar type design standard to that of the Trent 700 and has also been found in service to be susceptible to carbon deposits in the oil vent tube.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received. The commenter supports the NPRM.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 138 RB211 Trent 800 series turbofan engines installed on airplanes of U.S. registry. We also estimate that it will take about one work-hour per engine to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $2,000 per engine. Based on these figures, we estimate the cost of the AD on U.S. operators to be $287,040.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–06–14 Rolls-Royce plc: Amendment 39–16239. Docket No. FAA–2009–1004; Directorate Identifier 2009–NE–36–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 3, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Rolls-Royce plc models RB211–Trent 875–17, Trent 877–17, Trent 884–17, Trent 884B–17, Trent 892–17, Trent 892B–17, and Trent 895–17 turbofan engines. These engines are installed on, but not limited to, Boeing 777 series airplanes.

Reason

(d) During 2004, an incident was reported involving uncontained multiple intermediate-pressure (IP) turbine blade release on a Trent 700 engine. The blade release was the result of an overspeed of the IP turbine rotor that was initiated by an internal fire in the high-pressure/intermediate-pressure (HP/IP) bearing chamber. Post-incident analysis and investigation has established that blockage of the HP/IP turbine bearing oil vent tube due to carbon deposits was a significant factor in the failure sequence. The Trent 800 has a similar type design standard to that of the Trent 700 and has also been found in service to be susceptible to carbon deposits in the oil vent tube.

This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to prevent internal oil fires due to coking and carbon buildup in the HP/IP turbine bearing oil vent tube that could cause uncontained engine failure and damage to the airplane.

Actions and Compliance

(e) Unless already done, do the following actions.

(1) At the next engine shop visit after the effective date of this AD and thereafter at each engine shop visit, using the Accomplishment Instructions of Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AE362, Revision 1, dated April 3, 2009:

(i) Inspect the HP/IP turbine bearing internal and external oil vent tubes and bearing chamber for carbon buildup.

(ii) Clean and flush the tubes and bearing chamber as required.

(iii) Reject any oil vent tubes that do not meet inspection requirements after cleaning.

(2) This AD does not require reporting of inspection results, as does paragraphs 3.B.(4)(g) and 3.C.(9) of Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AE362, Revision 1, dated April 3, 2009.

FAA AD Differences

(f) None.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(h) Refer to MCAI European Aviation Safety Agency AD 2009–0071 (corrected April 14, 2009), for related information.

(i) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) You must use Rolls-Royce plc Alert Service Bulletin No. RB.211–72–AE362, Revision 1, dated April 3, 2009, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Rolls-Royce plc, PO Box 31, Derby, England; telephone: 011–44–1332–249428; fax: 011–44–1332–249223.

(3) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts on March 9, 2010.

Peter A. White,

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

[FR Doc. 2010–5788 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0978; Directorate Identifier 2008–NM–014–AD; Amendment 39–16234; AD 2010–06–10]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 767–200, –300, and –300F series airplanes. For certain airplanes, this AD requires installing support hardware and modifying the interfacing wiring of the fuel quantity indicating system (FQIS) densitometer. For certain other airplanes, this AD requires replacing the existing hot short protector (HSP) on the FQIS densitometer with a new HSP. This AD also requires revising the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–22. This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel densitometer from overheating and becoming a potential ignition source inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

DATES: This AD is effective May 3, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 3, 2010.

ADDRESSES: 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 767–200, –300, and –300F series airplanes. That NPRM was published in the **Federal Register** on July 2, 2009 (74 FR 31640). For certain airplanes, that NPRM proposed to require modifying the fuel quantity indicating system (FQIS) densitometer. For certain other airplanes, that NPRM proposed to require replacing the existing hot short protector (HSP) on the FQIS densitometer with a new HSP. That NPRM also proposed to require revising the Airworthiness Limitations (AWL) section of the Instructions for Continued Airworthiness to incorporate AWL No. 28–AWL–22.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Support for the NPRM

Continental Airlines has no technical objection to the NPRM.

Request To Clarify Certain Language

Boeing asks that we clarify certain language in the Summary section of the NPRM, and notes that the fuel quantity indicating system (FQIS) densitometer is not being modified as specified in that section. Boeing states that the proposed actions are for the installation of appropriate support hardware and modifications to the densitometer interfacing wiring to install an HSP, or to replace the HSP in a limited number of airplanes.

We agree with the Boeing comment. We specified in the Relevant Service Information section of the NPRM that the service bulletin describes procedures for modifying the FQIS densitometer, which include installing new HSP support brackets and grounding brackets, installing an HSP and bonding jumper, rerouting certain wire bundles, and installing new wire bundles. These actions are described in Boeing Service Bulletin 767–28A0094, Revision 1, dated April 23, 2009 (referred to in the NPRM as the appropriate source of service information for accomplishing the actions). However, after further review we have determined that using the phrase "modifying the FQIS densitometer" is too broad. Therefore, for clarification, we have changed that language in the Summary section and paragraph (f) of this AD to specify "installing support hardware and modifying the interfacing wiring of the FQIS densitometer."

Clarification of HSP Replacement

Boeing also states, for information only, that there are no safety-related concerns regarding use of the existing HSP. Boeing notes that an operator can choose to replace the existing HSP with a new HSP if it experiences in-service problems with the HSP. Boeing adds that it plans to revise Service Bulletin 767–28A0094, Revision 1, dated April 23, 2009, to remove the only airplane in Group 4; the procedures for Group 4 airplanes require replacement of the existing HSP with a new HSP.

We acknowledge the Boeing comment; no change to the AD is necessary in this regard.

Request To Extend Compliance Time

The Air Transport Association (ATA), on behalf of its member American Airlines (AAL), asks that the compliance time in the NPRM be extended from 60 to 72 months. ATA states that this would allow operators to modify the majority of airplanes during scheduled heavy maintenance visits. ATA adds that the Boeing 767 Maintenance Review Board document recommends heavy maintenance visits at intervals of 72 months, and carrier maintenance programs, facilities, and resources are organized to best support maintenance involving fuel tank entry and sensitive testing at that time. ATA notes that a shorter compliance time could require establishing dedicated modification lines and impose additional impact outside of Part 39 rulemaking. ATA believes that an extension would maintain an acceptable level of safety in view of previous ADs that addressed the same unsafe condition. AAL further states that 28–AWL–22 will now require a loop resistance check of the new wire bundles after installation in order to verify the bonding requirements are being met. Because of the extreme sensitivity of the test equipment, AAL believes that this modification should be accomplished at the same time as the majority of other fuel tank inspections and modifications, which would be at the heavy check.

We do not agree with the commenters' request. In developing an appropriate compliance time for the modification, we considered the safety implications and the practical aspect of accomplishing the modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In consideration of these items, we have determined that a 60-month compliance time will ensure an acceptable level of safety and allow the modification to be done during scheduled maintenance intervals for most affected operators. However, under the provisions of paragraph (k)(1) of the AD, we will consider requests to adjust the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have made no change to the AD in this regard.

Request To Exclude Cargo-Only Airplanes

The ATA, on behalf of its member UPS, asks that all cargo-only airplanes currently in operation be exempt from the NPRM requirements. ATA adds that these airplanes have significantly less exposure to flammable conditions in fuel tanks. UPS notes that changing the maintenance programs to add bonding checks will be sufficient to address the HSP issue in the existing cargo-only airplanes. UPS states that it does not object to new cargo-only airplanes having the HSP installed.

We do not agree with the commenters' request. The unsafe condition identified in this AD has been evaluated under the criteria established for conditions associated with fuel tank systems, as specified in the "Discussion" section of the NPRM. We determined that the actions identified in this AD are necessary to reduce the potential of

ignition sources inside the center wing tank. The center wing tank has been identified as a high flammability tank under the Special Federal Aviation Regulation No. 88 ("SFAR 88," Amendment 21–78, and subsequent Amendments 21–82 and 21–83), fuel tank safety assessments, and the failure type and fuel tank exposure to flammable conditions were taken into consideration. The type of failure that is addressed in this AD cannot be mitigated by performing bonding checks. Cargo-only airplanes having the same design are still subject to the unsafe condition. We have made no change to the AD in this regard.

UPS adds that the cost benefit (analysis) does not justify retrofit on current cargo airplanes.

We infer that UPS means that the cost benefit (analysis) does not justify retrofit on current cargo airplanes; we do not agree. The data in the Costs of Compliance section (below) is limited only to the cost of actions actually required by the AD. The cost analysis in AD rulemaking actions does not include the costs of "on-condition" actions that are necessary when doing those on-condition actions. Regardless of AD direction, those actions would be required to correct an unsafe condition identified in an airplane and ensure operation of that airplane in an airworthy condition, as required by the Federal Aviation Regulations. Therefore, we have made no change to the AD in this regard.

Clarification to Final Rule

We have revised this final rule to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work hour to $85 per work hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD affects 192 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Affected airplane groups/action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Group 1, Group 2, Configuration 1, and Group 3, modification.	Between 4 and 8.	$85	Between $11,377 and $14,376.	Between $11,717 and $15,056.	191	Between $2,237,947 and $2,875,696.
Group 4, replacement	2	85	None	170	1	170.
AWL revision	1	85	None	85	192	16,320.

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

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 this AD:

(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) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–06–10 The Boeing Company: Amendment 39–16234. Docket No. FAA–2008–0978; Directorate Identifier 2008–NM–014–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 3, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, and –300F series airplanes, certificated in any category; as identified in Boeing Service Bulletin 767–28A0094, Revision 1, dated April 23, 2009.

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 (k) 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 fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent the center tank fuel densitometer from overheating and becoming a potential ignition source inside the center fuel tank, which, in combination with flammable fuel vapors, could result in a center fuel tank explosion and consequent loss of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Install Support Hardware and Modify Wiring of the Fuel Quantity Indicating System (FQIS) Densitometer; Replace Hot Short Protector (HSP)

(f) Within 60 months after the effective date of this AD, do the actions specified in paragraphs (f)(1) and (f)(2) of this AD, as applicable, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–28A0094, Revision 1, dated April 23, 2009.

(1) For Group 1 airplanes, Group 2 airplanes, Configuration 1, and Group 3 airplanes: Install support hardware and modify the interfacing wiring of the FQIS densitometer.

(2) For Group 4 airplanes: Replace the existing HSP with a new HSP.

Note 2: In Figure 9, Step 8, of the Accomplishment Instructions of Boeing Service Bulletin 767–28A0094, Revision 1, dated April 23, 2009, the ground identification number is identified as GD19393S; however, the correct ground identification number is GD10393S.

Credit for Service Information Accomplished Previously

(g) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 767–28A0094, dated November 20, 2007, are acceptable for compliance with the requirements of paragraph (f) of this AD.

Airworthiness Limitations (AWL) Revision

(h) Concurrently with accomplishing the actions required by paragraph (f) of this AD, revise the AWL section of the Instructions for Continued Airworthiness by incorporating AWL No. 28–AWL–22 into the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Section 9, Revision May 2009.

No Alternative Critical Design Configuration Control Limitations (CDCCL)

(i) After the actions specified in paragraph (h) of this AD have been accomplished, no alternative CDCCL for AWL No. 28–AWL–22 may be used, unless the CDCCL is approved as an AMOC in accordance with the procedures specified in paragraph (k) of this AD.

Terminating Action for AWL Revision

(j) Incorporating AWL No. 28–AWL–22 into the AWL section of the Instructions for Continued Airworthiness in accordance with paragraph (g)(2) of AD 2008–11–01, amendment 39–15523, terminates the action required by paragraph (h) of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(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: Georgios Roussos, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6482; 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

(l) You must use Boeing Service Bulletin 767–28A0094, Revision 1, dated April 23, 2009; and AWL No. 28–AWL–22 of the Boeing 767 Maintenance Planning Data (MPD) Document, D622T001–9, Section 9, Revision May 2009; as applicable; to do the actions required by this AD, unless the AD specifies otherwise. The Boeing 767 MPD Document, D622T001–9, Section 9, Revision May 2009, contains the following effective pages:

LIST OF EFFECTIVE PAGES

Page title/description	Page No(s).	Revision	Date shown on page(s)
Title Page, MPD Section 9	9.0–1	May 2009	May 2009.
	9.0–2	None Shown *	None Shown.*
Table of Contents, MPD Section 9	9.0–3	May 2009	May 2009.
	9.0–4	None Shown *	None Shown.*
Revisions, MPD Section 9	9.0–5—9.0–14	May 2009	May 2009.
List of Effective Pages, MPD Section 9	9.0–15	May 2009	May 2009.
	9.0–16	None Shown *	None Shown.*
AWL No. 28–AWL–22	9.0–85	April 2008	April 2008.

*The dates shown on the pages of Boeing 767 MPD Document D622T001–9, Revision May 2009, are the revision level of those pages. Pages 9.0–2, 9.0–4, and 9.0–16 of Boeing 767 MPD Document D622T001–9, Revision May 2009, are intentionally not dated.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(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 March 4, 2010.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5856 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD; Amendment 39–16244; AD 2010–07–01]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–Trent 500, 700, and 800 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product, and results from the risk of engine fuel-to-oil heat exchanger (FOHE) blockage. The MCAI describes the unsafe condition as:

In January 2008, a Boeing 777 powered by RB211–Trent 800 engines crashed short of the runway as a result of dual loss of engine response during the final stages of approach. The investigation of the incident has established that, under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the FOHE front face and limit fuel flow through the FOHE. This type of icing event was previously unknown and creates ice concentrations into the fuel system beyond those specified in the certification requirements.

In May 2009, an Engine Indicating and Crew Alerting System (EICAS) surge message was set following a successful go-around maneuver on a single RB211–Trent 700 engine of an A330 aircraft. Subsequent analysis concluded the likely cause to be temporary ice accumulation causing fuel flow restriction in the FOHE. The incident has indicated the potential susceptibility to ice blockage for Airbus aircraft in combination with Rolls-Royce engines that feature similar fuel systems to the RB211–Trent 800.

We are issuing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss and loss of control of the airplane.

DATES: This AD becomes effective May 3, 2010. The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of May 3, 2010. The Director of the Federal Register previously approved the incorporation by reference of certain publications listed in the regulations as of January 4, 2010 (74 FR 6222, November 27, 2009).

ADDRESSES: The Docket Operations office is located at Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.

Contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936, for the service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA proposed to amend 14 CFR part 39 by superseding AD 2009–24–05, Amendment 39–16092 (74 FR 62222, November 27, 2009), with a proposed AD. The proposed AD applies to Rolls-Royce plc RB211–Trent 500, 700, and 800 series turbofan engines. We published the proposed AD in the **Federal Register** on January 6, 2010 (75 FR 801). That action proposed to correct an unsafe condition for the specified products. The MCAI states:

In January 2008, a Boeing 777 powered by RB211–Trent 800 engines crashed short of the runway as a result of dual loss of engine response during the final stages of approach. The investigation of the incident has established that, under certain ambient conditions, ice can accumulate on the walls of the fuel pipes within the aircraft fuel system, which can then be released downstream when fuel flow demand is increased. This released ice can then collect on the FOHE front face and limit fuel flow through the FOHE. This type of icing event was previously unknown and creates ice concentrations into the fuel system beyond those specified in the certification requirements.

In May 2009, an EICAS surge message was set following a successful go-around maneuver on a single Trent 700 engine of an A330 aircraft. Subsequent analysis concluded the likely cause to be temporary ice accumulation causing fuel flow restriction in the FOHE. The incident has indicated the potential susceptibility to ice blockage for Airbus aircraft in combination with Rolls-Royce engines that feature similar fuel systems to the RB211–Trent 800.

To mitigate the risk of engine FOHE blockage, this AD requires, for RB211–Trent 500, 700, and 800 series turbofan engines, replacing the existing FOHE with a FOHE incorporating the modifications specified in the applicable Rolls-Royce plc Alert Service Bulletin.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received.

Request To Allow Use of Later Revisions of Service Bulletins

One commenter, Deutsche Lufthansa AG, requests that we add language to the AD that allows the use of later revisions of the service bulletins incorporated by reference. This change would make the AD more consistent with the related European Aviation Safety Agency ADs.

We do not agree. Rulemaking requirements do not permit advance approval of unknown future revisions to service bulletins. We did not change the AD.

Request To Change the Compliance Period

Airline Pilots Association, International, (ALPA) requests that we change the proposed AD compliance time from "Within 6,000 flight hours after the effective date of this AD, but no later than January 1, 2011", to "Within six months after the effective date of the AD or within 6,000 flight hours after receipt of the Service Bulletin." ALPA believes that the decreased compliance times are important since, in the event a blockage of the FOHE, the current procedure requires an immediate idle descent to melt the blockage. Due to this aircraft's design mission of long range flight, it often operates over oceanic and geographically remote areas where radar surveillance may not exist and communications with the air traffic control is encumbered by language limits, poor radio reception, and third party communication relay services. These areas may concentrate traffic on specific routes or tracks. This creates the potential for traffic conflicts during the descent, without the ability to receive timely Air Traffic Control clearance or the additional safety oversight provided by radar separation. This engine rollback is very insidious to the crew and creates the potential for a pilot to be faced with an immediate descent without adequate time to compensate for traffic, weather, or terrain.

We do not agree. For the RB211–Trent 800 series engines, on February 17, 2009, the Transport Airplane Directorate issued AD 2009–05–11 that revises the airplane flight manual to include in-flight procedures for pilots to follow in

certain cold weather conditions. That AD also includes mandating fuel circulation procedures on the ground when certain conditions exist. These procedures are considered adequate to assure continued safe operation through all environments and conditions, including those expressed by ALPA, until hardware modifications become available. Those procedures also reduce hazardous amounts of ice buildup within the fuel feed system and eliminate ice accumulation on the face of the FOHE. For the RB211–Trent 500 series and 700 series engines, changing the compliance time to 6 months would not result in a significant benefit to the level of safety. We did not change the AD.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

The European Aviation Safety Agency (EASA) AD 2009–0142, dated July 13, 2009, and EASA AD 2009–0257, dated December 3, 2009, require replacing the FOHE within 6,000 flight hours from July 10, 2009 or before January 1, 2011, whichever occurs first. This AD requires replacing the FOHE on RB211–Trent 500 and RB211–Trent 700 series turbofan engines within 6,000 flight hours after the effective date of this AD, or before January 1, 2011, whichever occurs first, and on RB211–Trent 800 series turbofan engines, replacing the FOHE within 6,000 flight hours after January 4, 2010 (the effective date of AD 2009–24–05), or before January 1, 2011, whichever occurs first.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 138 RB211–Trent 800 series engines, and about 10 RB211–Trent 700 series engines, installed on airplanes of U.S. registry. There are currently no RB211–Trent 500 series engines installed on airplanes of U.S. registry. We also estimate that it will take about 8.5 work-hours per product to comply with this AD. The average labor rate is $80 per work-hour. Required parts will cost about $58,005 per product. Based on these figures, we estimate the cost of the AD on U.S. operators to be $8,685,380.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this 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 this AD:

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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office 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 Operations office (telephone (800) 647–5527) is provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 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 39–16092 (74 FR 62222, November 27, 2009), and by adding a new airworthiness directive, Amendment 39–16244, to read as follows:

2010–07–01 Rolls-Royce plc: Amendment 39–16244. Docket No. FAA–2009–0674; Directorate Identifier 2009–NE–25–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective May 3, 2010.

Affected Airworthiness Directives (ADs)

(b) This AD supersedes AD 2009–24–05, Amendment 39–16092.

Applicability

(c) This AD applies to:

(1) Rolls-Royce plc models RB211–Trent 553–61, 556–61, 556B–61, 560–61, 553A2–61, 556A2–61, 556B2–61, and 560A2–61 turbofan engines with fuel-to-oil heat exchangers (FOHEs) part number (P/N) 55027001–1 or 55027001–11 installed; and

(2) Rolls-Royce plc models RB211–Trent 768–60, 772–60, 772B–60, and RB211–Trent 875–17, 877–17, 884–17, 884B–17, 892–17, 892B–17, and 895–17 turbofan engines with FOHEs P/N 55003001–1 or 55003001–11 installed.

(3) The RB211–Trent 500 series engines are installed on, but not limited to, Airbus A340–500 and –600 series airplanes. The RB211–Trent 700 series engines are installed on, but not limited to, Airbus A330–200 and –300 series airplanes. The RB211–Trent 800 series engines are installed on, but not limited to, Boeing 777 series airplanes.

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product, and results from the risk of engine FOHE blockage. We are issuing this AD to prevent ice from blocking the FOHE, which could result in an unacceptable engine power loss and loss of control of the airplane.

Actions and Compliance

(e) For RB211–Trent 500 series turbofan engines and RB211–Trent 700 series turbofan engines, unless already done, within 6,000 flight hours after the effective date of this AD, or before January 1, 2011, whichever occurs first, do the following:

(1) For RB211–Trent 500 series turbofan engines, replace the FOHE P/N 55027001–1 or 55027001–11, with an FOHE that incorporates the modifications specified in Rolls-Royce plc Alert Service Bulletin (ASB) No. RB.211–79–AG346, dated October 23, 2009.

(2) For RB211–Trent 700 series turbofan engines, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG338, Revision 1, dated December 2, 2009.

(f) For RB211–Trent 800 series turbofan engines, unless already done, replace the FOHE, P/N 55003001–1 or 55003001–11, with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG257, Revision 1, dated September 14, 2009 within 6,000 flight hours from January 4, 2010 (the effective date of FAA AD 2009–24–05), or before January 1, 2011, whichever comes first.

FAA AD Differences

(g) This AD differs from the Mandatory Continuing Airworthiness Information (MCAI) by requiring replacing the FOHE within 6,000 flight hours after the effective date of this AD for RB211–Trent 500 and RB211–Trent 700 series turbofan engines or January 4, 2010 for RB211–Trent 800 series turbofan engines, rather than within 6,000 flight hours from July 10, 2009.

Previous Credit

(h) For RB211–Trent 700 series engines, replacement of the FOHE with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG338, dated September 29, 2009, complies with the replacement requirement specified in paragraph (e)(2) of this AD.

(i) For RB211–Trent 800 series engines, replacement of the FOHE with an FOHE that incorporates the modifications specified in Rolls-Royce plc ASB No. RB.211–79–AG257, dated June 24, 2009, complies with the replacement requirement specified in paragraph (f) of this AD.

Alternative Methods of Compliance (AMOCs)

(j) The Manager, Engine Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(k) Refer to European Aviation Safety Agency MCAI AD 2009–0142, dated July 13, 2009, and MCAI AD 2009–0257, dated December 3, 2009, for related information.

(l) Contact James Lawrence, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *james.lawrence@faa.gov;* telephone (781) 238–7176; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(m) You must use the service information specified in Table 1 of this AD to perform the FOHE modifications required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of Rolls-Royce plc Alert Service Bulletin No. RB.211–79–AG346, dated October 23, 2009, and Rolls-Royce plc Alert Service Bulletin No. RB. 211–79–AG338, Revision 1, dated December 2, 2009 under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Rolls-Royce plc ASB No. RB.211–79–AG257, Revision 1, dated September 14, 2009, as of January 4, 2010.

(3) For service information identified in this AD, contact Rolls-Royce plc, P.O. Box 31, DERBY, DE24 8BJ, UK; telephone 44 (0) 1332 242424; fax 44 (0) 1332 249936.

(4) You may review copies at the FAA, New England Region, 12 New England Executive Park, Burlington, MA; or 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/cfr/ibr-locations.html.*

TABLE 1—MATERIAL INCORPORATED BY REFERENCE

Rolls-Royce plc Alert Service Bulletin No.	Page	Revision	Date
RB.211–79–AG346.			
Total Pages: 28.	All	Original	October 23, 2009.
RB.211–79–AG338.			
Total Pages: 25.	All	1	December 2, 2009.
RB.211–79–AG257	All	1	September 14, 2009.

Issued in Burlington, Massachusetts, on March 17, 2010.

Francis A. Favara,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2010–6311 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0795; Directorate Identifier 2009–NM–083–AD; Amendment 39–16242; AD 2010–06–17]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 757 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model 757 airplanes. This AD requires inspecting to verify the part number of the low-pressure flex-hoses of the flightcrew and supernumerary oxygen system installed under the oxygen mask stowage box at a flightcrew and supernumerary oxygen mask location, and replacing with a new non-conductive low-pressure flex-hose of the oxygen system if necessary. This AD results from reports of a low-pressure flex-hose of a flightcrew oxygen system that burned through due to inadvertent electrical current from a short circuit in an adjacent audio select panel. We are issuing this AD to prevent inadvertent electrical current, which can cause the low-pressure flex-hose of a flightcrew or supernumerary oxygen system to melt or burn, resulting in oxygen system leakage and smoke or fire.

DATES: This AD is effective May 3, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 3, 2010.

ADDRESSES: 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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West

Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nicholas Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an airworthiness directive (AD) that would apply to certain Model 757 airplanes. That NPRM was published in the **Federal Register** on September 29, 2009 (74 FR 49827). That NPRM proposed to require inspecting to verify the part number of the low-pressure flex-hoses of the flightcrew and supernumerary oxygen system installed under the oxygen mask stowage box at a flightcrew and supernumerary oxygen mask location, and replacing with a new non-conductive low-pressure flex-hose of the oxygen system if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comments received from the six commenters.

Support for the NPRM

Boeing, Air Line Pilots Association, International (ALPA), and the National Transportation Safety Board (NTSB) support the NPRM.

Request To Withdraw NPRM

American Airlines states that the NPRM is unnecessary and should be retracted. The commenter states that, given the Boeing compliance recommendation of "earliest opportunity when manpower, material and facilities are available," risk analysis for the unsafe condition was found to be below the extremely improbable threshold. The commenter states that the NPRM would affect 102 of its airplanes, all of which have been modified to preclude the unsafe condition. The commenter also states that, of the 485 airplanes affected by the NPRM, it has mitigated the risk on 25 percent of the U.S. fleet. The commenter states that the three other large U.S. operators have also incorporated Boeing Service Bulletin 757–35A0015, Revision 2, dated June 15, 2000. The commenter states that this combined effort has substantially addressed the U.S. fleet and reduced the risk probabilities even further. The commenter also states that it has put procedures in place to preclude reintroducing the unsafe condition. The commenter also states that, since Boeing Service Bulletin 757–35A0015, dated September 2, 1999, was issued 10 years ago, the FAA appears to agree that at least 13 years is an appropriate interval of time in which the affected airplanes could continue to operate without compromising safety. The commenter states that the compliance period appears arbitrary and is not based on accepted risk assessment practices.

We do not agree to withdraw the NPRM. Sufficient information exists to demonstrate that our risk analysis for the unsafe condition is adequate in determining the compliance times required in this AD. We acknowledge that American Airlines has been proactive in compliance with the requirements of this AD; however, not every operator has been quite as proactive. According to various bilateral airworthiness agreements with countries around the world, we are obligated to advise other civil airworthiness authorities of unsafe conditions identified in products manufactured in the United States. The issuance of ADs is the means by which we satisfy this obligation. Even if the current U.S.-registered fleet is in compliance with the requirements of the AD, the issuance of the rule is still necessary to ensure that any affected airplane imported and placed on the U.S. register in the future will be required to be in compliance as well. The manufacturer has advised us that not all of the affected airplanes worldwide have been modified. Issuance of this AD will ensure that the airplanes are modified before they are permitted to operate in the U.S. We have not changed the AD in this regard.

Request To Allow a One-time Ferry Flight

FedEx requests that a one-time ferry flight to a maintenance base be allowed for airplanes in a non-compliant configuration due to being in storage. FedEx states that a ferry flight would be required after the 36-month compliance date.

We partially agree with the request for a one-time ferry flight. We agree with allowing special flight permits for the purpose of flying the airplane to a repair facility to do the work required by this AD. However, we disagree with revising this AD to specifically state that special flight permits are approved for this purpose. Special flight permits are currently allowed under section 39.23 of the Federal Aviation Regulations (14 CFR 39.23). No change has been made to the AD in this regard.

Request That Visual Inspections for the Part Number Not Be Required if Previously Done

Northwest Airlines requests that visual inspections for part numbers of the low-pressure oxygen flex hose not be required if the airline has previously complied with Boeing Service Bulletin 757–35A0015, Revision 2, dated June 15, 2000. The commenter provided no further justification for this request.

We agree that the visual inspection of the hose is not necessary if the operator has previously accomplished the actions specified in Boeing Service Bulletin 757–35A0015, Revision 2, dated June 15, 2000. Paragraph (f) of this AD states that the required actions must be done within the specified compliance times, "* * * unless the actions have already been done." This AD does not require that the actions be redone if they were done before the effective date of the AD. No change to the AD is necessary in this regard.

Request To Reduce Proposed Compliance Time

ALPA requests a shorter compliance time. ALPA states that the 36-month inspection and replacement interval is too long due to a high degree of risk imposed on passengers and crew.

We do not agree. In developing an appropriate compliance time, we considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of inspecting the low-pressure flex-hoses of the flightcrew and supernumerary oxygen system. Further, we arrived at the proposed compliance time with operator and manufacturer concurrence. In consideration of all of these factors, we determined that the compliance time, as proposed, represents an appropriate interval in which the inspection and replacement can be accomplished in a timely manner within the fleet, while still maintaining an adequate level of safety. Operators are always permitted to accomplish the requirements of an AD at a time earlier than the specified compliance time; therefore, an operator may choose to replace the oxygen hose before 36 months after the effective date of this AD in order to accomplish the requirements of this AD. If additional data are presented that would justify a shorter compliance time, we might consider further rulemaking on this issue. We have not changed the AD in this regard.

Request To Revise Applicability To Include Manufacturers of Other Airplanes With Similar Low-Pressure Oxygen Hoses

Although the NTSB fully supports the NPRM, the NTSB states that because the risk of fire from electrically conductive hoses is not restricted to Boeing models, the FAA should widen the inspection and replacement of oxygen hoses beyond the airplanes cited in the NPRM. The NTSB notes that the NPRM and the future rules mentioned in the NPRM would apply only to Boeing airplanes. The NTSB states that suppliers provide other airplane manufacturers with low-pressure oxygen hoses that are nearly identical to those that the NPRM seeks to identify and replace.

From these statements, we infer the NTSB is requesting that we revise the NPRM to add other airplane models to the applicability of the NPRM. We agree that suspect low-pressure oxygen hoses or similar hoses might be installed on airplane models produced by manufacturers other than Boeing. Determining whether an unsafe condition exists on these other airplanes is outside the scope of this AD. We will continue to evaluate the safety implications of these oxygen hoses as they apply to other manufacturers and initiate additional rulemaking to address the unsafe condition on those airplanes if necessary. We have not changed the AD in this regard.

Request To Remove Requirement for Recording Part Numbers

Northwest Airlines requests that we remove the proposed requirement to record the part number of the flex hose that is intended for replacement. Northwest Airlines states that once an oxygen hose has been identified as affected by the visual inspection confirming the part number, the affected hose will be replaced. Northwest Airlines states that there is no further instruction on where to record this information or what to do with it. Northwest Airlines states that requiring the recording of the part number of the affected oxygen hose does not provide any benefit or enhance safety.

We agree that recording the part number of the affected hose does not serve any safety interest. Recording the part number of the affected hose identified for replacement as specified in Boeing Service Bulletin 757–35A0015, Revision 2, dated June 15, 2000, is not necessary for compliance with this AD. We have revised paragraph (g)(1) of this AD to clarify that recording the part number of the affected oxygen hose is not necessary.

Explanation of Changes Made to This AD

We have revised this AD to identify the legal name of the manufacturer as published in the most recent type certificate data sheet for the affected airplane models.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We also determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Explanation of Change to Costs of Compliance

Since issuance of the NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work-hour to $85 per work-hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

We estimate that this AD would affect 485 airplanes of U.S. registry. We also estimate that it would take 1 work-hour per product to comply with this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $41,225, or $85 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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 this AD:

(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) 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

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 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2010–06–17 The Boeing Company: Amendment 39–16242. Docket No. FAA–2009–0795; Directorate Identifier 2009–NM–083–AD.

Effective Date

(a) This airworthiness directive (AD) is effective May 3, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 757–200, –200CB, –200PF, and –300 series airplanes, certificated in any category; as identified in the service bulletins listed in Table 1 of this AD.

TABLE 1—APPLICABILITY

Boeing Service Bulletin	Revision	Dated	Applicable model/series
757–35A0015	2	June 15, 2000	757–200, 757–200CB, 757–200PF.
757–35A0016	1	June 15, 2000	757–300.

Subject

(d) Air Transport Association (ATA) of America Code 35: Oxygen.

Unsafe Condition

(e) This AD results from reports of a low-pressure flex-hose of a flightcrew oxygen system that burned through due to inadvertent electrical current from a short circuit in an adjacent audio select panel. We are issuing this AD to prevent inadvertent electrical current which can cause the low-pressure flex-hoses used in the flightcrew and supernumerary oxygen system to melt or burn, resulting in oxygen system leakage and smoke or fire.

Compliance

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

Inspection

(g) Within 36 months after the effective date of this AD, inspect to determine whether any low-pressure flex-hose of the flightcrew and supernumerary oxygen systems installed under the oxygen mask stowage location has a part number identified in Table 2 of this AD. A review of airplane maintenance records is acceptable in lieu of this inspection if the part number of the low-pressure flex-hoses of the flightcrew and supernumerary oxygen system can be conclusively determined from that review.

(1) For any low-pressure flex-hose having a part number identified in Table 2 of this AD, before further flight, replace the hose with a new or serviceable part, in accordance with the Accomplishment Instructions of the applicable service bulletin identified in Table 1 of this AD. Recording the part number of the hose being replaced is not required by this AD.

(2) For any low-pressure flex-hose not having a part number identified in Table 2 of this AD, no further action is required by this paragraph.

Parts Installation

(h) As of the effective date of this AD, no person may install a flightcrew or supernumerary oxygen hose with a part number identified in Table 2 of this AD on any airplane.

TABLE 2—APPLICABLE PART NUMBERS

Boeing specification part No.—	Equivalent Boeing supplier part numbers—				
	Sierra Engineering	Spencer Fluid	Puritan Bennett	Hydraflow	AVOX (formerly Sierra Engineering)
60B50059–70	835–01–70	9513–20S5–18.0	ZH784–20	38001–70	9513–835–01–70
60B50059–81	835–01–81	9513–20S5–24.0	ZH784–81	38001–81	9513–835–01–81

Actions Accomplished According to Previous Issue of Service Bulletin

(i) Actions accomplished before the effective date of this AD in accordance with Boeing Alert Service Bulletin 757–35A0015, dated September 2, 1999, or Revision 1, dated November 11, 1999; or Boeing Alert Service Bulletin 757–35A0016, dated November 11, 1999; are considered acceptable for compliance with the corresponding actions specified in this AD.

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: Nicholas Wilson, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6476; 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 Service Bulletin 757–35A0015, Revision 2, dated June 15, 2000; or Boeing Service Bulletin 757–35A0016, Revision 1, dated June 15, 2000; as applicable; to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(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 March 9, 2010.

Jeffrey E. Duven,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–5857 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0556; Directorate Identifier 2007–NM–028–AD; Amendment 39–16246; AD 2010–07–02]

RIN 2120–AA64

Airworthiness Directives; Various Aircraft Equipped With Honeywell Primus II RNZ–850( )/–851( ) Integrated Navigation Units

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) that applies to certain Honeywell Primus II RNZ–850( )/–851( ) integrated navigation units (INUs). As one alternative for compliance, the existing AD provides for a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV–850 navigation receiver module (NRM), which is part of the INU. In lieu of accomplishing this inspection, and for aircraft found to have an affected NRM, that AD provides for revising the aircraft flight manual to include new limitations for instrument landing system approaches. That AD also requires an inspection to determine whether certain other modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable; as well as further modifications to address additional anomalies. This AD extends the compliance time for a certain inspection and associated actions. This AD also revises the applicability to include additional affected INUs. This AD results from reports indicating that erroneous localizer and glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are issuing this AD to ensure that the flightcrew has accurate localizer and glideslope deviation indications. An erroneous localizer or glideslope deviation indication could lead to the aircraft making an approach off the localizer, which could result in impact with an obstacle or terrain.

DATES: This AD becomes effective May 3, 2010.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 3, 2010.

On December 1, 2006 (71 FR 62907, October 27, 2006), the Director of the Federal Register approved the incorporation by reference of Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004.

ADDRESSES: For service information identified in this AD, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, Arizona 85072–2170; telephone 602–365–5535; fax 602–365–5577; Internet *http://www.honeywell.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 address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–22–05, Amendment 39–14802 (71 FR 62907, October 27, 2006). The existing AD applies to various aircraft equipped with certain Honeywell Primus II RNZ–850( )/–851( ) integrated navigation units (INUs). That NPRM was published in the **Federal Register** on May 19, 2008 (73 FR 28751). That NPRM proposed to continue to provide, as one alternative for compliance, a one-time inspection to determine whether a certain modification has been installed on the Honeywell Primus II NV–850 navigation receiver module (NRM), which is part of the INU. In lieu of accomplishing this inspection, and for aircraft found to have an affected NRM, that NPRM proposed to continue to provide for revising the aircraft flight manual to include new limitations for instrument landing system approaches. That NPRM proposed to continue to require an inspection to determine whether certain other modifications have been done on the NRM; and doing related investigative, corrective, and other specified actions, as applicable; as well as further modifications to address additional anomalies. That NPRM also proposed to extend the compliance time for a certain inspection and associated actions and to revise the applicability to include additional affected INUs.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments that have been received on the NPRM.

Request for Credit for Actions Performed in Compliance With Previous Service Information

Two commenters, ExpressJet Airlines and Honeywell, request that credit be given for actions performed in compliance with previous service information.

ExpressJet Airlines states that paragraph (l) of the NPRM calls for an inspection on any INU that is not identified in Table 2 of the NPRM. However, the NPRM does not take into account the units which have already been driven to Mod T status by Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004. ExpressJet requests that compliance with Honeywell Service Bulletin 7510100–34–0037 be considered as an alternative to the inspections required in paragraph (l) of the NPRM.

Honeywell also commented on the same issue. Honeywell states that it is concerned that many airplanes have been inspected and verified to be compliant with AD 2006–22–05. Honeywell asks the FAA to clarify whether the intent of the NPRM was to require that all affected operators re-inspect their airplanes. Honeywell also asks if the FAA can make a note under the compliance section to advise operators who actually complied with AD 2006–22–05 and verified their radios have modification AS and the new part number installed that they were already compliant with the new AD.

We agree to provide clarification for both ExpressJet Airlines' and Honeywell's comments. Paragraph (l) of this AD applies only to any INUs that are not listed in Table 2 of this AD (which is the same list as Table 1 of AD 2006–22–05). In addition, if operators have previously inspected INUs that are not listed in Table 2 and have accomplished the applicable actions specified in paragraph (l) of this AD, then those operators are already in compliance with paragraph (l) of this AD. According to paragraph (e) of this AD, the actions are required within the specified compliance time, unless already accomplished. Honeywell Service Bulletin 7510100–34–0037 only addresses the localizer fix. However, this AD requires that the glide slope be fixed in addition to the localizer. We will not consider compliance with Honeywell Service Bulletin 7510100–34–0037 as an alternative to the inspections required in paragraph (l) of the NPRM. No changes have been made to the final rule.

Request To Remove Reference to Specific Revision of Service Information

Honeywell requests that the FAA remove the reference to Revision 1, dated January 21, 2003, of the Honeywell Technical Newsletter (TNL) A23–3850–001 and simply reference the "current revision." The TNL is currently at Revision 6. Based on the release of this new AD, Honeywell states that it plans to update the TNL with current information and clarify how to interpret the AD. Honeywell states that it cannot release the update until the new AD is released.

We disagree with Honeywell's request to refer to the "current revision" of the TNL. The NPRM did not require the Honeywell TNL, but did require Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; as the appropriate sources of service information to accomplish the required actions in this AD. Honeywell provided the TNL as a tool to communicate with its customers regarding this technical issue. We included the TNL in Note 3 of the NPRM for reference only. To avoid confusion, we have removed Note 3 of the NPRM, which referred to this TNL.

Request To Revise Paragraph (j) of the NPRM

Honeywell recommends wording changes to paragraph (j) of the NPRM to remove the sentence "If Mod T is installed, no further action is required by this paragraph."

We agree to remove the sentence "If Mod T is installed, no further action is required by this paragraph" from paragraph (j) of the NPRM. Although Honeywell provides no justification for this wording change, we agree that making this change provides further clarification. Doing Mod T repairs only the localizer in accordance with Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004. However, the intent of this AD is to require that the glide slope and the localizer be serviced. Doing Mod T repairs the localizer in accordance with Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004. The glide slope is addressed by accomplishing the actions in Honeywell Alert Service Bulletin 7510100–34–A0034, dated February 28, 2003. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003, does not address the localizer; it provides instructions for changing the part number after the glide slope is repaired. The glide slope and the localizer repairs are accomplished independent from each other in different Honeywell service bulletins.

Therefore, we have revised paragraph (j) of this AD by adding the text "* * * (which relates to the glide slope fix) * * *" to the sentence that begins "If Mod L, N, P, or R is installed * * *" and adding "if Mod T is not installed (which relates to the localizer fix), within 30 months after December 1, 2006, do all applicable related investigative, corrective, and other specified actions in accordance with the Accomplishment Instructions * * *" in that same sentence (before "Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004"). We made this change to clarify that Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004, addresses the localizer fix. This change does not increase the scope of this AD.

Request To Include Additional Service Information

Honeywell requests that we add Honeywell Alert Service Bulletin 7510134–34–A0017, dated July 11, 2003, to Table 1 in the NPRM.

We agree to include Honeywell Alert Service Bulletin 7510134–34–A0017, dated July 11, 2003, in Table 1 of this final rule to maintain consistency because the other service bulletins included in Table 1 of this AD were issued in pairs. Honeywell Alert Service Bulletin 7510100–34–A0034, dated February 28, 2003, was paired with Honeywell Alert Service Bulletin 7510134–34–A0016, Revision 001, dated March 4, 2003. Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004, was paired with Honeywell Service Bulletin 7510134–34–0018, dated July 8, 2004. Adding Honeywell Alert Service Bulletin 7510134–A0017, does not change any requirements of this AD, because Honeywell Alert Service Bulletin 7510134–34–A0017 is a prerequisite to Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003, and Honeywell Alert Service Bulletin 7510100–34–A0035 refers to Honeywell Alert Service Bulletin 7510134–34–A0017.

We contacted Honeywell for more information about the technical content of Honeywell Alert Service Bulletin 7510134–34–A0017, dated July 11, 2003. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003, references Honeywell Alert Service Bulletin 7510134–34–A0017, dated July 11, 2003, as a source of service information on the new part numbers assigned after performing Honeywell Alert Service Bulletin 7510100–34–A0034, dated February 28, 2003. We have added Honeywell Alert Service Bulletin 7510134–34–A0017, dated July 11, 2003, to Table 1 of this AD. This does not increase the financial burden on operators, nor does it increase the scope of the AD.

Request To Add Part Numbers

Honeywell requests that we revise paragraph (l) of the NPRM to list part numbers 7510134–611, –631, –701, and –731; which are parts of the Honeywell Primus II RNZ–850( )/–851( ) INU after modification; to the inspection to determine whether Mod L, N, P, R, or T is installed.

We agree to provide clarification. We have revised paragraphs (l), (l)(1), (l)(2), and (l)(3) of this AD to specify the NRM part numbers 7510134–611, –631, –701, and –731 instead of the modification level. Paragraphs (l)(1) and (l)(2) of this AD correctly specify which combination of part number and modification level meets the technical requirements of the modification. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Explanation of Changes to This AD

We have changed the product identification line in the body of this AD to specify the design approval holder of the affected appliance rather than "various aircraft."

Conclusion

We have carefully reviewed the available data, including the comments that have been received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Explanation of Change to Costs of Compliance

After the NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $80 per work hour to $85 per work hour. The cost impact information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

There are about 3,063 aircraft of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to

comply with this AD. The manufacturer states that it will supply required parts to existing customers at no cost.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per aircraft	Number of U.S.-registered aircraft	Fleet cost
Inspection for NRM modification level	1	$85	$0	$85	Up to 1,500	Up to $127,500.
AFM revision	1	85	0	85	Up to 1,500	Up to 127,500.
Modification (to Mod T configuration)	1	85	0	85	Up to 1,500	Up to 127,500.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed actions specified in this final rule, and that no operator would accomplish those actions in the future if this AD were not adopted. We have been advised, however, that the actions have already been done on some affected airplanes. Therefore, the future economic cost impact of this rule on U.S. operators is expected to be less than the cost impact figures indicated above.

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 this AD:

(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) 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 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 Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14802 (71 FR 62907, October 27, 2006) and by adding the following new airworthiness directive (AD):

2010–07–02 Honeywell, Inc.: Amendment 39–16246. Docket No. FAA–2008–0556; Directorate Identifier 2007–NM–028–AD.

Effective Date

(a) This AD becomes effective May 3, 2010.

Affected ADs

(b) This AD supersedes AD 2006–22–05, Amendment 39–14802.

Applicability

(c) This AD applies to various aircraft, certificated in any category, equipped with any Honeywell Primus II RNZ–850( )/–851( ) integrated navigation units (INUs) identified in a service bulletin identified in Table 1 of this AD. The aircraft include, but are not limited to, BAE Systems (Operations) Limited (Jetstream) Model 4101 airplanes; Bombardier Model BD–700–1A10 airplanes; Bombardier Model CL–215–6B11 (CL–415 variant) airplanes; Cessna Model 560, 560XL, and 650 airplanes; Dassault-Aviation Model Mystere-Falcon 50 airplanes; 328 Support Services GmbH (Dornier) Model 328–100 and –300 airplanes; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–135 airplanes and Model EMB–145, –145ER, –145MR, –145LR, –145XR, –145MP, and –145EP airplanes; Learjet Model 45 airplanes; Hawker Beechcraft Corporation Model Hawker 800XP and Hawker 1000 airplanes; and Sikorsky Model S–76A, S–76B, and S–76C aircraft.

TABLE 1—SERVICE BULLETINS AFFECTED BY THIS AD

INUs listed in Honeywell—	Revision—	Dated—
(1) Alert Service Bulletin 7510134–34–A0016	001	March 4, 2003.
(2) Alert Service Bulletin 7510134–34–A0017	Original	July 11, 2003.
(3) Service Bulletin 7510134–34–0018	Original	July 8, 2004.
(4) Alert Service Bulletin 7510100–34–A0034	Original	February 28, 2003.
(5) Alert Service Bulletin 7510100–34–A0035	Original	July 11, 2003.
(6) Service Bulletin 7510100–34–0037	Original	July 8, 2004.

Note 1: This AD applies to Honeywell Primus II RNZ–850( )/–851( ) INUs installed on any aircraft, regardless of whether the aircraft has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (o) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Unsafe Condition

(d) This AD results from reports indicating that erroneous localizer and glideslope indications have occurred on certain aircraft equipped with the subject INUs. We are issuing this AD to ensure that the flightcrew has accurate localizer and glideslope deviation indications. An erroneous localizer or glideslope deviation indication could lead to the aircraft making an approach off the localizer, which could result in impact with an obstacle or terrain.

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 Certain Requirements of AD 2006–22–05

Compliance Time for Action

(f) For any INU identified in Table 2 of this AD: Within 5 days after March 11, 2003 (the effective date of AD 2003–04–06, Amendment 39–13054, which was superseded by AD 2006–22–05), accomplish the requirements of either paragraph (g) or (h) of this AD. After December 1, 2006 (the effective date of AD 2006–22–05), only accomplishing the requirements of paragraph (g) of this AD is acceptable for compliance with this paragraph.

TABLE 2—INUS IDENTIFIED IN AD 2006–22–05

P/N 7510100–811 through 7510100–814 inclusive.
P/N 7510100–831 through 7510100–834 inclusive.
P/N 7510100–901 through 7510100–904 inclusive.
P/N 7510100–911 through 7510100–914 inclusive.
P/N 7510100–921 through 7510100–924 inclusive.
P/N 7510100–931 through 7510100–934 inclusive.

Inspection To Determine Part Number

(g) For any INU identified in Table 2 of this AD: Perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV–850 Navigation Receiver Module (NRM); part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850( )/–851( ) INU; to determine if Mod L has been installed. The modification plate is located on the bottom of the Honeywell Primus II RNZ–850( )/–851( ) INU, is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod T is installed, the letter will be blacked out. The Honeywell service bulletins listed in Table 1 of this AD are acceptable sources of service information for the inspection required by this paragraph.

(1) If Mod L is installed, before further flight, do paragraph (h) or (j) of this AD. After December 1, 2006, only accomplishment of paragraph (j) is acceptable for compliance with this paragraph.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Aircraft Flight Manual (AFM) Revision

(h) For aircraft having an INU identified in Table 2 of this AD: Revise the Limitations section of the AFM to include the following statements (which may be accomplished by inserting a copy of the AD into the AFM):

"*FLIGHT LIMITATIONS*

When crossing the Outer Marker on glideslope, the altitude must be verified with the value on the published procedure.

For aircraft with a single operating glideslope receiver, the approach may be flown using normal procedures no lower than Localizer Only Minimum Descent Altitude (MDA).

For aircraft with two operating glideslope receivers, the aircraft may be flown to the published minimums for the approach using normal procedures if both glideslope receivers are tuned to the approach and both crew members are monitoring the approach using independent data and displays."

Parts Installation

(i) For aircraft having an INU identified in Table 2 of this AD: As of March 11, 2003, no person may install a Honeywell Primus II NV–850 NRM on which Mod L has been installed, on the Honeywell Primus II RNZ–850( )/–851( ) INU of any aircraft, unless paragraph (h) or (j) of this AD is accomplished. As of December 1, 2006, only accomplishment of paragraph (j) is acceptable for compliance with this paragraph.

Inspection To Determine Modification Level of NRM

(j) For any INU identified in Table 2 of this AD on which Mod L was found to be installed during the inspection required by paragraph (g) of this AD, or for aircraft on which paragraph (h) of this AD was accomplished: Within 30 months after December 1, 2006, do an inspection of the modification plate on the Honeywell Primus II NV–850 NRM; part number 7510134–811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850( )/–851( ) INU; to determine if Mod L, N, P, R, or T is installed. The modification plate located on the bottom of the Honeywell Primus II RNZ–850( )/–851( ) INU is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L, N, P, R, or T is installed, the corresponding letter on the modification plate will be blacked out. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; are acceptable sources of service information for this inspection. If Mod L, N, P, or R is installed (which relates to the glide slope fix), within 30 months after December 1, 2006, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and if Mod T is not installed (which relates to the localizer fix), within 30 months after December 1, 2006, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; to ensure that the NRM is at the Mod T configuration. Once the actions in this paragraph are completed, the AFM revision required by paragraph (h) of this AD may be removed from the AFM.

(k) If the inspection specified in paragraph (j) of this AD is done within the compliance time specified in paragraph (f) of this AD, paragraph (g) of this AD does not need to be done.

New Requirements of This AD

Inspection To Determine Mod Level

(l) For any INU that is not identified in Table 2 of this AD: Within 30 months after the effective date of this AD, perform a one-time general visual inspection of the modification plate for the Honeywell Primus II NV–850 Navigation Receiver Module (NRM); part number 7510134–611, –631, –701, –731, 811, –831, –901, or –931; which is part of the Honeywell Primus II RNZ–850()/–851() INU; to determine whether Mod L, N, P, R, or T is installed. The modification plate located on the bottom of the Honeywell Primus II RNZ–850()/–851() INU is labeled NV–850, and contains the part number and serial number for the Honeywell Primus II NV–850 NRM. If Mod L, N, P, R, or T is installed, the corresponding letter on the modification plate will be blacked out. Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; are acceptable sources of service information for this inspection.

(1) If the NRM is part number 7510134–611, –631, –701, or –731, and has Mod T

installed: No further action is required by this paragraph.

(2) If the NRM is part number 7510134–611, –631, –701, or –731, and Mod T is not installed, within 30 months after the effective date of this AD: Do all applicable related investigative, corrective, and other specified actions, in accordance with the accomplishment Instructions of Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; to ensure that the NRM is at the Mod T configuration.

(3) If the NRM is part number 7510134–811, –831, –901, or –931: Within 30 months after the effective date of this AD, do all applicable related investigative, corrective, and other specified actions, in accordance with the Accomplishment Instructions of Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; to ensure that the NRM part number has been updated to 7510134–611, –631, –701, –731 configuration and Mod T has been installed.

Parts Installation

(m) As of the effective date of this AD, no person may install a Honeywell Primus II RNZ–850()/–851() INU that contains a NV–850 NRM part number 7510134–811, –831, –901, or –931; or part number 7510134–611, –631, –701, or –731, that does not have Mod T installed, unless paragraph (l) is accomplished.

No Report

(n) Where Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003 (or any of the related service information referenced therein), specifies to submit certain information to the manufacturer, this AD does not include that requirement.

Alternative Methods of Compliance (AMOCs)

(o)(1) The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Daniel Bui, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5339; fax (562) 627–5210.

(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

(p) You must use the service information contained in Table 3 of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. (Only the first page of these documents specifies the revision level of the document; no other page contains this information.)

TABLE 3—ALL MATERIAL INCORPORATED BY REFERENCE

Honeywell—	Revision—	Dated—
Alert Service Bulletin 7510134–34–A0016	001	March 4, 2003.
Alert Service Bulletin 7510134–34–A0017	Original	July 11, 2003.
Alert Service Bulletin 7510100–34–A0034	Original	February 28, 2003.
Alert Service Bulletin 7510100–34–A0035	Original	July 11, 2003.
Service Bulletin 7510100–34–0037	Original	July 8, 2004.
Service Bulletin 7510134–34–0018	Original	July 8, 2004.

(1) The Director of the Federal Register approved the incorporation by reference of the service information contained in Table 4 of this AD under 5 U.S.C. 552(a) and 1 CFR part 51.

TABLE 4—NEW MATERIAL INCORPORATED BY REFERENCE

Honeywell—	Revision—	Dated—
Alert Service Bulletin 7510134–34–A0016	001	March 4, 2003.
Alert Service Bulletin 7510134–34–A0017	Original	July 11, 2003.
Alert Service Bulletin 7510100–34–A0034	Original	February 28, 2003.
Service Bulletin 7510134–34–0018	Original	July 8, 2004.

(2) The Director of the Federal Register previously approved the incorporation by reference of Honeywell Alert Service Bulletin 7510100–34–A0035, dated July 11, 2003; and Honeywell Service Bulletin 7510100–34–0037, dated July 8, 2004; on December 1, 2006 (71 FR 62907, October 27, 2006).

(3) For service information identified in this AD, contact Honeywell Technical Operations Center, 1944 East Sky Harbor Circle, Phoenix, AZ 85034–3442; telephone (US & Canada) 800–601–3099, (International) 602–365–3099; Internet *http://www.honeywell.com.*

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

(5) 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 March 17, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6547 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM05–1–002]

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects

March 18, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations, in order to clarify them in response to Order Nos. 717 and 717–

A, governing the Standards of Conduct for transmission providers. These amendments are required in order to make clear to prospective applicants for an Alaska natural gas transportation project which Standards of Conduct are applicable to conducting open seasons for Alaska natural gas transportation projects. This clarification will benefit both prospective applicants and prospective shippers of an Alaska natural gas transportation project by eliminating any uncertainties those parties may have pertaining to the standards of conduct governing open seasons for such a project.

DATES: *Effective Date:* This rule will become effective April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Jacqueline Holmes, Assistant General Counsel, Energy Projects, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426. *jacqueline.holmes@ferc.gov*. Whit Holden, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426. *edwin.holden@ferc.gov*.

SUPPLEMENTARY INFORMATION:

Order No. 2005–B; Final Rule

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Before Commissioners: Jon Wellinghoff, Chairman; Marc Spitzer, Philip D. Moeller, and John R. Norris.

I. Introduction

1. By this instant final rule, the Commission is amending part 157, subpart B of its regulations, specifically 18 CFR 157.34 and 157.35, in order to clarify and reconcile them in response to Order Nos. 717 and 717–A,[1] governing the Standards of Conduct for transmission providers. Part 157, subpart B contains the regulations governing open seasons for Alaska natural gas transportation projects. Specifically, the Commission is eliminating references to "energy affiliates" in §§ 157.34 and 157.35 of the Commission's regulations in order to be consistent with Order No. 717, in which the Commission eliminated the concept of "energy affiliates" in response to the U.S. Court of Appeals for the DC Circuit decision in *National Fuel Gas Corporation* v. *FERC (National Fuel).*[2]

2. The Commission, in Order No. 717, also eliminated the corporate functional approach taken in Order No. 2004's[3] Standards of Conduct in favor of an employee functional approach. In doing so, the Commission revised and reformed the Standards of Conduct to combine the best elements of Order No. 2004, with those of the Standards of Conduct originally adopted by the Commission in Order Nos. 497[4] (for the gas industry) and 889[5] (for the electric industry). By this rule, the Commission is reconciling in § 157.35(d) to the specific Standards of Conduct with which a project sponsor conducting an open season for an Alaska natural gas transportation project must comply, as they have been revised and now appear in the Commission's regulations as a result of Order Nos. 717 and 717–A.

II. Background

3. In 1988, the Commission, in Order No. 497, first adopted Standards of Conduct for transmission providers. In Order No. 497, the Commission sought to deter undue preferences by (i) separating a transmission function provider's employees engaged in transmission services from those engaged in its marketing services, and (ii) requiring that all transmission customers, affiliated and non-affiliated, be treated on a non- discriminatory basis.

4. In 2003, the Commission issued Order No. 2004, which broadened the Standards of Conduct to include a new category of affiliate, the energy affiliate.[6] The new standards were made applicable to both the electric and gas industries, and provided that the transmission employees of a transmission provider[7] must function independently not only from the company's marketing affiliates but from its energy affiliates as well, and that

[1] *Standards of Conduct for Transmission Providers,* Order No. 717, 73 FR 63796 (Oct. 27, 2008); FERC Stats. & Regs. ¶ 31,280 (2008), *order on reh'g and clarification,* Order No. 717–A, FERC Stats. & Regs. ¶ 31,297 (2009), *order on reh'g,* Order No. 717–B, 129 FERC ¶ 61,123 (2009).

[2] 468 F.3d 831 (DC Cir. 2006).

[3] *Standards of Conduct for Transmission Providers,* Order No. 2004, FERC Stats. & Regs. ¶ 31,155 (2003), *order on reh'g,* Order No. 2004–A, FERC Stats. & Regs. ¶ 31,161, *order on reh'g,* Order No. 2004–B, FERC Stats. & Regs. ¶ 31,166, *order on reh'g,* Order No. 2004–C, FERC Stats. & Regs. ¶ 31,172 (2004), *order on reh'g,* Order No. 2004–D, 110 FERC ¶ 61,320 (2005), *vacated and remanded as it applies to natural gas pipelines sub nom. National Fuel Gas Supply Corp.* v. *FERC,* 468 F.3d 831 (DC Cir 2006); *see Standards of Conduct for Transmission Providers,* Order No. 690, FERC Stats. & Regs. ¶ 31,237, *order on reh'g,* Order No. 690–A, FERC Stats. & Regs. ¶ 31,243 (2007); *see also Standards of Conduct for Transmission Providers,* Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,611 (2007); Notice of Proposed Rulemaking, FERC Stats. & Regs. ¶ 32,630 (2008).

[4] *Inquiry into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines,* Order No. 497, 53 FR 22139 (Jun. 14, 1988), FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,820 (1988), Order No. 497–A, *order on reh'g,* 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,868 (1989) Order No. 497–B, *order extending sunset date,* 57 FR 9 (Jan. 2, 1992), FERC Stats. & Regs., Regulations Preambles January 1991–June 1996 ¶ 30,934 (1991), *reh'g denied,* 57 FR 5815 (Feb. 18, 1992), *aff'd in part and remanded in part sub nom. Tenneco Gas v. FERC,* 969 F.2d 1187 (DC Cir. 1992) (*Tenneco*) (collectively, Order No. 497).

[5] *Open Access Same-Time Information System and Standards of Conduct,* Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh'g,* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049, *reh'g denied,* Order No. 889–B, 81 FERC ¶ 61,253 (1997).

[6] The Order No. 2004 Standards of Conduct defined an energy affiliate as an affiliate of a transmission provider that (1) engages in or is involved in transmission transactions in U.S. energy or transmission markets; (2) manages or controls transmission capacity of a transmission provider in U.S. energy or transmission markets; (3) buys, sells, trades, or administers natural gas or electric energy in U.S. energy or transmission markets; or (4) engages in financial transactions relating to the sale or transmission of natural gas or electric energy in U.S. energy or transmission markets. Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 40; *see also* 18 CFR 358.3(d). Certain categories of entities were excluded from this definition in subsequent sections of the regulations.

[7] A transmission provider was defined as (1) any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce; or (2) any interstate natural gas pipeline that transports gas for others pursuant to subpart A of Part 157 or subparts B or G of Part 284 of the same chapter of the regulations. Order No. 2004, FERC Stats. & Regs. ¶ 31,155 at P 33–34; *see also* 18 CFR 358.3(a).

transmission providers may not treat either their energy affiliates or their marketing affiliates on a preferential basis.

5. In 2005, the Commission issued Order No. 2005,[8] amending its regulations to establish requirements governing the conduct of open seasons for proposals to construct Alaska natural gas transportation projects.[9] In order to further the Commission's goal of a non-discriminatory open season, Order No. 2005 applied certain of the Standards of Conduct requirements of Order No. 2004, several of which incorporated Order No. 2004's "energy affiliate" concept.

6. In 2006, in *National Fuel,* the U.S. Court of Appeals for the DC Circuit overturned the standards as applied to gas transmission providers on the ground that the evidence of energy affiliate abuse cited by the Commission was not in the record.[10] As a result of the court's decision in *National Fuel,* on January 9, 2007, the Commission issued an interim rule, Order No. 690,[11] which repromulgated the portions of the Standards of Conduct not challenged in *National Fuel* as applied to natural gas transmission providers. Subsequently, on October 16, 2008, the Commission issued Order No. 717 amending the Standards of Conduct for transmission providers to make them clearer and to refocus the rules on the area where there is the greatest potential for abuse.

7. The reforms in Order No. 717 were intended to eliminate the elements that had rendered the Standards of Conduct difficult to enforce and apply. The Commission strove to conform the Standards of Conduct with the court's opinion in *National Fuel* and combine the best elements of Order No. 2004 with those elements of the Standards of Conduct originally adopted in Order Nos. 497 and 889. Specifically, Order No. 717 (i) eliminated the concept of energy affiliates, and (ii) eliminated the corporate separation approach in favor of the employee functional approach used in Order Nos. 497 and 889.

III. Discussion

8. The Commission's goal in promulgating §§ 157.34 and 157.35 of its regulations was to prevent unduly discriminatory behavior and limit the ability of a project applicant for an Alaska natural gas transportation project to unduly favor its affiliates in the open season process. The Commission sought to do this by applying certain of the Standards of Conduct requirements of Order No. 2004 to all project applicants conducting open seasons for an Alaska natural gas transportation project because this would minimize the risk that an affiliate of a project applicant would have an advantage over non-affiliates in obtaining capacity through the open season.

9. First, in § 157.35(c), the Commission required project applicants to create/designate a unit or division to conduct the open season. The employees of this unit or division are treated as transmission function employees, and as such are required, under Order No. 2004, to function independent of the other non-regulated divisions of the project applicant, as well as the project applicant's Marketing and Energy Affiliates.[12] This, the Commission stated, would prevent Energy Affiliates or Marketing Affiliates of the project applicant who participate in the open season from having the advantage of information or strategy that non-affiliated open season participants do not have.

10. Second, in § 157.35(d), the Commission provided that the project sponsor's unit or division conducting an open season would be subject to certain provisions of the Standards of Conduct, specifically, those pertaining to: separation of functions (18 CFR 358.4(a)(1) and (3)); written procedures (18 CFR 358.4(e)(3), (4), (5) and (6)); information access (18 CFR 358.5(a)); information disclosure (18 CFR 358.5(b)); prohibitions against discrimination (18 CFR 358.5(c)(3) and(5)) and discounts (18 CFR 358.5(d).

A. Concept of "*Energy Affiliates*"

1. Current Alaska Open Season Regulations—§§ 157.34(c)(19), (20)(i) and (ii), and (21), and 157.35(c)

11. The current regulations governing the conduct of open seasons for Alaska natural gas transportation projects refer in several sections to "energy affiliates." In particular, paragraphs (19), (20)(i) and (ii), and (21) of § 157.34(c): include "Energy Affiliates" among the entities that a prospective applicant must list and identify in organizational charts to be included in the prospective applicant's Notice of Open Season.

12. Additionally, as part of the Commission's regulations to prevent undue discrimination or preference in the conduct of open seasons for Alaska natural gas transportation projects, § 157.35(c): Requires that all prospective applicants conducting open seasons for an Alaska natural gas transportation project function independent of, among others, their Energy Affiliates, as defined the Commission's Standards of Conduct.

B. New Alaska Open Season Regulations—§§ 157.34(c)(19), (20)(i) and (ii), and (21), and 157.35(c)

13. As stated above, Order No. 717 eliminated the concept of "energy affiliates" by deleting that term, as it was defined in § 358.3(d) [13] of the pre-Order No. 717 Standards of Conduct. Order No. 717 also deleted from the Standards of Conduct the definition of "marketing affiliate," consistent with its goal of eliminating Order No. 2004's corporate functional approach. In its stead, Order No. 717 refers to the terms "marketing function" in new § 358.3(c) [14] and "marketing function employee" in new § 358.3(d).[15] In the case of interstate pipelines and their affiliates, marketing function means "the sale for resale in interstate commerce, or the submission of offers to sell interstate commerce, natural gas" subject to several exclusions, including "sales of natural gas solely from a seller's own production, or a "seller's own gathering or processing facilities." [16] However, for purposes of these regulations, these exclusions, which also existed under the definition of "marketing" under the Order No. 2004 Standards of Conduct (*see* 18 CFR 358.3(l)(1)), cannot be read to exclude any prospective project sponsors that comprised or were affiliated with the owner of the Alaskan North Slope natural gas. The Commission made this clear by providing in § 157.35(d) of the open season regulations that all project applicants, even those who would not otherwise be subject to the Standards of Conduct provisions, must comply with certain enumerated sections of the Standards of Conduct.

14. Therefore, in order to render the regulations governing the conduct of

[8] *Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects,* Order No. 2005, FERC Stats. & Regs. ¶ 31,174 (2005), *order on reh'g,* Order No. 2005–A, FERC Stats. & Regs. ¶ 31,187 (2005).

[9] Order No. 2005 fulfilled the Commission's responsibilities under section 103 (e)(1) of the Alaska Natural Gas Pipeline Act (the Act), enacted on October 13, 2004, which directed the Commission, within 120 days from enactment of the Act, to promulgate regulations governing the conduct of open seasons for Alaska natural gas transportation projects, including procedures for allocation of capacity.

[10] *National Fuel,* 468 F.3d at 841.

[11] *Standards of Conduct for Transmission Providers,* Order No. 690, 72 FR 2427 (Jan. 19, 2007); FERC Stats. & Regs. ¶ 31,237 (2007) (*Interim Rule*); *clarified by, Standards of Conduct for Transmission Providers,* Order No. 690–A, 72 FR 14235 (Mar. 27, 2007); FERC Stats. & Regs. ¶ 31,243 (2007).

[12] *See* 18 CFR 358.4(a)(1).

[13] 18 CFR 358.3(d).

[14] 18 CFR 358.3(c).

[15] 18 CFR 358.3(d).

[16] 18 CFR 358.3(c)(iii) and (iv).

open seasons for Alaska natural gas transportation projects consistent with the current Standards of Conduct, the Commission is amending paragraphs (19), (20) and (21) of § 157.34(c) to eliminate references to "energy affiliates" and "marketing affiliates," and is adopting Order No. 717's employee functional approach as reflected in the marketing function/marketing function employee concept. However, the Commission is also making clear that the "producer exemption" of § 358.3(c)(iii) does not apply in the case of prospective applicants conduction open seasons for Alaska natural gas transportation projects.

15. The Commission is also amending § 157.35(c) to eliminate references to "Energy Affiliates" in that provision of the open season regulations, and to replace the term "marketing affiliates" with "affiliates" performing a "marketing function," as those terms are defined in the current Standards of Conduct. Again, the Commission is making clear in this section that the "producer exemption" of § 358.3(c)(iii) does not apply in the case of prospective applicants conduction open seasons for Alaska natural gas transportation projects.

C. Specific Provisions of the Standards of Conduct; Current Alaska Open Season Regulations—§ 157.35(d)

16. As explained above, Commission provided in § 137.35(d) that the project sponsor's unit or division conducting an open season would be subject to certain provisions of the Commission's Standards of Conduct, namely, §§ 358.4(a)(1) and (3); 358.4(e)(3), (4), (5), and (6); 358.5(a), (b), (c)(3) and (5); and 358.5(d). That section also provided that the exemptions from § 358.4(a)(1) and (3) set forth in § 358.4(a)(4), (5), and (6) of the open season regulations also applied to any project applicant conducting an open season for an Alaska natural gas transportation project.

17. Below, we will discuss the specific Standards of Conduct with which an applicant for an Alaska natural gas transportation project must comply and compare those requirements with those contained in the Standards of Conduct as revised by Order No. 717.

D. Separation of Functions—§§ 358.4(a)(1) and (3) (2004)

18. Under § 157.35(d) of the Commission's open season regulations, any project applicant conducting an open season for an Alaska natural gas transportation project must comply with the separation of functions requirements of the Standards of Conduct found in §§ 358.4(a)(1) and (3) of the Commission's regulations.[17]

19. The independent functioning requirements of § 358.4(a)(1) now appear in the new Standards of Conduct, as amended by Order No. 717, at § 358.5(a) of the Commission's regulations.[18] The new standard has two minor differences from the Order No. 2004 standard. First, the exception for emergency circumstances affecting system reliability was replaced by a broader exception "as permitted in this part or otherwise permitted by Commission order." This change should have no impact on a project applicant's obligations since no emergency circumstances affecting system reliability would occur at the open season stage. The second difference is that reference to "Marketing and Energy Affiliates" has been replaced by reference to "marketing function employees," reflecting Order No. 717's elimination of the Energy Affiliate and the adoption of an employee functional approach in lieu of a corporate functional approach. The separation of functions requirements described in § 358.4(a)(3) are now found in § 358.5(b) of the new standards,[19] although they, too, are now expressed in terms that reflect Order No. 717's employee functional approach by replacing reference to "Marketing and Energy Affiliates" with reference to "marketing function employees."

E. Written Procedures—§§ 358.4(e)(3), (4), (5) and (6)

20. Section 157.35(d) of the Commission's open season regulations also imposes on any project applicant conducting an open season for an Alaska natural gas transportation project certain requirements pertaining to written procedures, training, and compliance oversight as set out in §§ 358.4(e)(3), (4), (5) and (6).[20] Specifically, § 358.4(e)(3) requires each project applicant to post on its Internet Web site its written procedures describing how it will comply with the applicable Standards of Conduct and pursuant to § 358.4(e)(4), these procedures are to be distributed to specified employees. Also, under the requirements of § 358.4(e)(5), each project applicant is required to train its employees involved in the open season or part of the open season unit/division, officers, directors and employees with access to transportation information or information concerning gas purchases, sales or marketing functions. Finally, the project applicant must also designate a Chief Compliance Officer who will be responsible for Standards of Conduct compliance as set out in § 358.4(e)(6).

21. Requirements pertaining to written procedures, training, and compliance oversight are now set out in §§ 358.7(d) (posting written procedures); 358.8(b)(2) (distribution of written procedures); 358.8(c)(1) (employee training); and 358.8(c)(2) (designation of compliance officer). Although there are some differences in the details of these procedures, they are minor, and should impose no undue burdens on project applicants conducting open seasons. Likewise, they will not dilute or alter the Commission's goal to ensure a non-discriminatory open season for an Alaska natural gas transportation project.

22. For example, the new Standards of Conduct do not specifically require that the procedures to be posted must be "in such detail as will enable customers and the Commission to determine that the Transmission Provider is in compliance with the requirements of this section."[21] Additionally, the training requirements of the old Standards of Conduct must now be met annually and new employees must be trained within 30 days.[22] Finally, in addition to designating a Chief Compliance Officer, the new Standards of Conduct require that the Chief Compliance Officer's name and contact information be posted.[23]

F. Information Access and Disclosure—§§ 358.5(a) and (b)

23. The application of the information access (18 CFR 358.5(a)) and disclosure (18 CFR 358.5(b)) requirements also apply to project applicants in order to ensure that employees of Marketing/Energy Affiliates[24] participating in the Open Season will not have access to any transmission information that is not publicly available to non-affiliated participants and to require that any disclosure of non-public transmission information to a Marketing/Energy Affiliate will be immediately disclosed to all other actual and potential open season participants by posting that

[17] Old 18 CFR 358.4(a)(1) and (3).

[18] 18 CFR 358.5(a).

[19] 18 CFR 358.5(b).

[20] Old 18 CFR 358.4(e)(3), (4), (5) and (6).

[21] *Compare* old 18 CFR 358.4(e)(3) with 18 CFR 358.7(d).

[22] *Compare* old 18 CFR 358.4(e)(5) with 18 CFR 358.8(c)(1).

[23] *Compare* old 18 CFR 358.4(e)(6) with 18 CFR 358.8(c)(2).

[24] As explained *infra,* the concept of Energy Affiliate has been eliminated, and the marketing affiliate has been supplanted by the concept of the marketing function employee.

information on the project applicant's Internet Web site. Additionally, § 157.35(d) provides that the requirements set out in § 358.5(b)(4) for written consent before releasing non-affiliated customer information to a Marketing or Energy Affiliate and posting that consent on the Internet also apply to project applicants.

24. Requirements pertaining to information access and disclosure are now set out in §§ 358.6 and 358.7(a), (b), and (c). Although reworded to reflect the elimination of the Energy Affiliate and the replacement of references to Marketing Affiliates with the concept of marketing function employees, the new Standards of Conduct similarly ensure that a project sponsor's affiliated employees who conduct a marketing function will not have access to any transmission information that is not publicly available to non-affiliated open season participants and similarly require that any disclosure of non-public transmission information to a marketing function employee will be immediately posted on project applicant's Internet Web site for all other actual and potential open season participants to see.

G. Prohibition Against Discrimination—§§ 358.5(c)(3) and (5)

25. In Order No. 2005, the Commission sought to broadly prohibit discrimination by a project applicant conducting an open season and limit its ability to unduly favor a Marketing/Energy Affiliate by imposing some of the non-discrimination requirements of Order No. 2004. Specifically, under § 157.35(d), the non-discrimination provisions of the Standards of Conduct contained in §§ 358.5(c)(3) and (5)[25] were made to apply to project applicants. Section 358.5(c)(3) requires a Transmission Provider to process all similar requests for transmission in the same manner and within the same period of time; and § 358.5(c)(5) prohibits transmission providers from giving their Marketing or Energy Affiliates any preference over any other wholesale customer in matters relating to the sale or purchase of transmission service. The Commission felt that these provisions would ensure that a project applicant will not provide any preferences to affiliated participants in the context of an open season. These prohibitions remain intact under new §§ 358.4(c) and (d).

H. Discounts—§ 358.5(d)

26. Finally, § 157.35(d) imposes on a project applicant the provisions of § 358.5(d),[26] under which a Transmission Provider is required to post an offer of a discount for transmission service at the time an offer is contractually binding.[27] This, too, was done to ensure the transparency of the open season process and discourage undue preferences.

27. In Order No. 717, the Commission deleted the obligation of § 157.35(d) to post discount information from the current Standards of Conducts. In P 218 of Order No. 717, we stated the following:

> The Commission further clarifies that where the information called for under the posting requirements of the Standards is duplicative of information required to be posted by transmission providers under other provisions of our regulations or orders, such as the posting requirements of 18 CFR part 284 and 18 CFR part 37, only a single posting is required, and the transmission provider is to follow the posting requirements, inclusive of substance, venue, and timing, of the other regulations or orders. We believe the posting requirements contained in such regulations or orders are sufficient to fulfill the transparency goals of the Standards of Conduct. Inasmuch as discount information is required to be posted both for the gas and electric industries under other provisions of our regulations, we delete proposed section 358.4(b), which had set forth proposed requirements for the posting of discount information.[28]

28. The Commission recognizes that other provisions of our regulations or orders, such as the posting requirements of 18 CFR part 284 and 18 CFR part 37, might not attach to a prospective applicant for an Alaska natural gas transportation project. However, under the open season regulations, such an applicant may not give undue preference to any person in matters relating to the sale or purchase of transmission service (including, but not limited to, issues of price * * *).[29] Under § 157.34(d)(4) of the Commission's regulations, a prospective applicant must submit copies of all precedent agreements to the Commission, at which time any discounted rates would be revealed, and the Commission can address any concerns or complaints regarding preferential treatment at that time.

I. Exemptions—§§ 358.4(a)(4), (5), and (6)

29. In addition, § 157.35(d) provides that the exemptions from §§ 358.4(a)(1) and (3) set forth in §§ 358.4(a)(4), (5), and (6) also apply to each project applicant conducting an Alaska natural gas transportation project open season. The applicable exemptions from the separation of functions would also apply to permit the project applicant to share various categories of employees, including: Support, field and maintenance employees (§ 358.4(a)(4)); senior officers and directors who are not "Transmission Function Employees" (as defined by 18 CFR 358.3(j)), provided that they do not participate in directing, organizing, or executing transmission system operations or market functions or act as conduits for sharing prohibited information with a Marketing or Energy Affiliate (§ 358.4(a)(5)); and risk management employees who are not engaged in transmission functions or sales or commodity functions (§ 358.4(a)(6)).

30. The new Standards of Conduct do not specifically enumerate similar categories of employees that may be shared. Instead, the sharing of these types of employees may be permitted by virtue of, and to the extent that, the employee in question is not one "who actively and personally engages on a day-to-day basis in marketing functions."[30]

31. As discussed above, applying the new Standards of Conduct provisions regarding the functional separation, information access and disclosure, and non-discrimination provisions of Order No. 717 to the open season process will ensure, in the same way that the Standards of Conduct currently listed in the open season regulations do, that the open season is conducted in a manner that is non-discriminatory and provides equal access to all participants, particularly those not affiliated with the project applicants. If during or following the open season the Commission determines that the project applicant has violated any of these requirements, the results of the open season with regard to the affiliates of that project applicant may be voided and a new open season held for that capacity.

32. Therefore, in order to render the regulations governing the conduct of open seasons for Alaska natural gas transportation projects consistent with the current Standards of Conduct, the Commission is amending paragraph (d) of § 157.35 to replace the various Order No. 2004 Standards of Conduct which

[25] Old 18 CFR 358.5(c)(3) and (5).

[26] Old 18 CFR 358.5(d).

[27] If an offer of a discount becomes contractually binding through the execution of a precedent agreement, the offer must be posted at that time, not at the time of the final agreement. *See* Order No. 2004–A, FERC Stats. & Regs. ¶ 31,161 at P 227.

[28] FERC Stats. & Regs. ¶ 31,280, at P 218 (2008).

[29] This requirement appears in both the Order No. 2004 Standards of Conduct (18 CFR 358.5(c)(5)) and the Order No. 717 Standards of Conduct (18 CFR 358.4(d)).

[30] *See* 18 CFR 358.3(d).

project sponsors conducting open seasons for an Alaska natural gas transportation project must comply with the applicable new Standards of Conduct promulgated under Order No. 717, as discussed above.

IV. Information Collection Statement

33. Office of Management and Budget (OMB) regulations require OMB to approve certain information collection requirements imposed by agency rule.[31] However, this instant Final Rule does not increase or decrease the information collection requirements that are already imposed under the Commission's open season regulations for Alaska natural gas transportation projects already imposed and compliance with OMB regulations is thus not required.

V. Environmental Analysis

34. The Commission is required to prepare an Environmental Assessment or Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[32] Issuance of this instant Final Rule does not represent a major Federal action having a significant adverse effect of the human environment under the Commission's regulations implementing the National Environmental Policy Act of 1969. Part 380 of the Commission's regulations lists exemptions to the requirement to draft an Environmental Assessment or Environmental Impact Statement. Included is an exemption for procedural, ministerial, or internal administrative actions.[33] This rulemaking is exempt under that provision.

VI. Regulatory Flexibility Act

35. The Regulatory Flexibility Act of 1980 (RFA) [34] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. This instant Final Rule concerns amendments to certain provisions of the Commission's regulations governing the conduct of open seasons for Alaska natural gas transportation projects, namely, 18 CFR 157.34 and 157.35. These changes are being made in order to render the open season regulations consistent with the Commission's current Standards of Conduct by reconciling references to the specific Standards of Conduct with which a project sponsor conducting an open season for an Alaska natural gas transportation project must comply. In large measure, the amendments made in this instant rule do not impose obligations on any Alaska natural gas transportation project applicants that are different than the obligations imposed under the current open season regulations. Rather than being substantive in nature, this rulemaking merely reconciles the references to specific requirements under the Standards of Conduct imposed under Order No. 2004, with those requirements as they now appear in the Standards of Conducts as a result of Order No. 717. Other than in minor details, such as training and posting requirements, as discussed above, any differences in the responsibilities imposed as a result of this rulemaking are differences in form rather than in substance as a result of the new employee functional approach taken by Order No. 717. The Commission certifies that it will not have a significant economic impact upon participants in Commission proceedings. Therefore, an analysis under the RFA is not required.

VII. Document Availability

36. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

37. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

38. User assistance is available for eLibrary and the Commission's Web site during normal business hours from FERC Online Support at 202–502–6652 (toll-free at 1–866–208;3676) or e-mail at *ferconlinesupport@ferc.gov,* or the Public Reference Room at 202–502–8371, TTY 202–502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

VIII. Notice and Comment and Effective Date

39. The Commission is issuing this rule as an instant Final Rule without a period for public comment. Under 5 U.S.C. 553(b), notice and comment procedures are unnecessary where a rulemaking concerns only agency procedure or practice, or where the agency finds that notice and comment is impracticable, unnecessary, or contrary to the public interest.

40. This rule concerns the amendment of 18 CFR 157.34 and 157.35 in order to clarify them in response to Order Nos. 717 and 717–A, governing the Standards of Conduct for transmission providers. The changes made in this rulemaking pertain to certain of these standards with which all project applicants conducting open seasons for an Alaska natural gas transportation project must comply.

41. Moreover, on January 29, 2010, TransCanada Alaska Company LLC filed, pursuant to § 157.38 of the Commission's regulations, a Request for Commission Approval of Detailed Plan for Conducting an Open Season in Docket No. PF09–11–001, and the Commission is aware that another potential sponsor of a proposed Alaska natural gas transportation project is preparing to soon file with the Commission its plan for conducting an open season. It is therefore important to clarify as expediently as possible exactly what is required of prospective applicants in order for them to comply with the open season regulations involving the Commission's Standards of Conduct.[35] For these reasons, the Commission finds that notice and public procedure on this rulemaking are impracticable, unnecessary, and contrary to the public interest.

42. The provisions of 5 U.S.C. 801 regarding Congressional review do not apply to this Final Rule, because this Final Rule concerns agency procedure and practice and will not substantially affect the rights of non-agency parties.

43. These regulations are effective April 28, 2010.

List of Subjects in 18 CFR Part 157

Administrative practice and procedure; Natural gas; Reporting and recordkeeping requirements.

[31] 5 CFR 1320.12.

[32] *Regulations Implementing the National Environmental Policy Act,* Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987).

[33] 18 CFR 380.4(a)(1).

[34] 5 U.S.C. 601–12.

[35] In this regard, the Commission is mindful of the Alaska Natural Gas Pipeline Act's overall objective of facilitating the timely development of an Alaska natural gas transportation project to bring Alaskan natural gas to markets in Alaska and in the lower 48 States.

By the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

■ In consideration of the foregoing, the Commission amends part 157, Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

■ 1. The authority citation for part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w.

■ 2. In § 157.34, paragraphs (c)(19), (20), and (21) are revised to read as follows:

§ 157.34 Notice of open season.

* * * * *

(c) * * *

(19) A list of the names and addresses of the prospective applicant's affiliated sales and marketing units and affiliates involved in the production of natural gas in the State of Alaska. Affiliated unit means "Affiliate" as defined in § 358.3(a) of this chapter. Marketing units and or affiliates are those conducting a "marketing function" as defined in § 358.3(c) of this chapter, except that the exemption in § 358.3(c)(2)(iii) shall not apply;

(20) A comprehensive organizational chart showing:

(i) The organizational structure of the prospective applicant's parent corporation(s) with the relative position in the corporate structure of marketing and sales units and any affiliates involved in the production of natural gas in the State of Alaska.

(ii) The job titles and descriptions, and chain of command for all officers and directors of the prospective applicant's marketing and sales units and any affiliates involved in the production of natural gas in the State of Alaska; and

(21) A statement that any officers and directors of the prospective applicant's affiliated sales and marketing units and affiliates involved in the production of natural gas in the State of Alaska named in paragraph (c)(19) of this section will be prohibited from obtaining information about the conduct of the open season or allocation of capacity that is not posted on the open season Internet Web site or that is otherwise also available to the general public or other participants in the open season.

* * * * *

■ 4. In § 157.35, paragraphs (c) and (d) are revised to read as follows:

§ 157.35 Undue discrimination and preference.

* * * * *

(c) Each prospective applicant conducting an open season under this subpart must function independent of the other divisions of the prospective applicant as well as the prospective applicant's "affiliates" performing a "marketing function" as those terms are defined in § 358.3(a) and (c) of the Commission's regulations, except that the exemption in § 358.3(c)(2)(iii) shall not apply. In instances in which the prospective applicant is not an entity created specifically to conduct an open season under this subpart, the prospective applicant must create or designate a unit or division to conduct the open season that must function independent of the other divisions of the project applicant as well as the project applicant's "affiliates" performing a "marketing function" as those terms are defined in § 358.3(a) of this chapter, except that the exemption in 358.3(c)(2)(iii) shall not apply.

(d) Each project applicant conducting an open season under this subpart that is not otherwise subject to the provisions of part 358 of this chapter must comply with the following sections of that part: §§ 358.4(c) and (d), 358.5, 358.6, 358.7(a), (b), and (c), and 358.8 (b) and (c) of this chapter.

[FR Doc. 2010–6770 Filed 3–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

[Docket No. FDA–2010–N–0001]

Advisory Committees; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations on public hearings before public advisory committees to reflect an internal change with respect to the staff that handles the nomination and selection process for nonvoting members representing consumer interests for standing technical advisory committees. FDA is also revising the address where the nominations for nonvoting members representing consumer interests should be submitted.

DATES: This rule is effective March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Dornette D. Spell LeSane, Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 5103, Silver Spring, MD 20993, 301–796–8220.

SUPPLEMENTARY INFORMATION: FDA is amending its regulations in part 14 (21 CFR part 14) to clarify that the Advisory Committee Oversight and Management Staff (ACOMS), within FDA's Office of the Commissioner, now coordinates the nomination and selection process for nonvoting members representing consumer interests for standing technical advisory committees. The amendments also change the address where interested persons should submit nominations for those nonvoting members. This document makes the appropriate changes to § 14.84(c).

Publication of this document constitutes final action on these changes under the Administrative Procedure Act (5 U.S.C. 553). FDA has determined that notice and public comment are unnecessary because this amendment to the regulations provides only technical changes.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

■ Therefore, under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

■ 1. The authority citation for part 14 continues to read as follows:

Authority: 5 U.S.C. App. 2; 15 U.S.C. 1451–1461, 21 U.S.C. 41–50, 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201, 262, 263b 264; Pub. L. 107–109; Pub. L. 108–155.

■ 2. Section 14.84 is amended by revising paragraphs (c)(1), (c)(3), (c)(4), and (c)(5)(ii) to read as follows:

§ 14.84 Nominations and selection of nonvoting members of standing technical advisory committees.

* * * * *

(c) * * *

(1) A period of 30 days will be permitted for submission of nominations for that committee or subcommittee. Interested persons may nominate one or more qualified persons to represent consumer interests. Although nominations from individuals

will be accepted, individuals are encouraged to submit their nominations through consumer organizations as defined in paragraph (c)(3) of this section. Nominations of qualified persons for general consideration as nonvoting members of unspecified advisory committees or subcommittees may be made at any time. All nominations are to be submitted in writing to Advisory Committee Oversight and Management Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 1503, Silver Spring, MD 20993.

* * * * *

(3) The Advisory Committee Oversight and Management Staff will compile a list of organizations whose objectives are to promote, encourage, and contribute to the advancement of consumer education and to the resolution of consumer problems. All organizations listed are entitled to vote upon the nominees. The list will include organizations representing the public interest, consumer advocacy groups, and consumer/health branches of Federal, State, and local governments. Any organization that meets the criteria may be included on such list on request.

(4) The executive secretary, or other designated agency employee, will review the list of nominees and select three to five qualified nominees to be placed on a ballot. Names not selected will remain on a list of eligible nominees and be reviewed periodically by the Advisory Committee Oversight and Management Staff to determine continued interest. Upon selection of the nominees to be placed on the ballot, the curriculum vitae for each of the nominees will be sent to each of the organizations on the list complied under paragraph (c)(3) of this section, together with a ballot to be filled out and returned within 30 days. After the time for return of the ballots has expired, the ballots will be counted and the nominee who has received the highest number of votes will be selected as the nonvoting member representing consumer interests for that particular advisory committee or subcommittee. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes

(5) * * *

(ii) If none of the nominees on the original ballot is willing to serve, or if there was only one nominee on the original ballot, the Advisory Committee Oversight and Management Staff will contact by telephone eligible individuals whose names have been submitted in the past as candidates for membership as representatives of consumer interests. A list of persons who are interested in serving on an advisory committee will then be prepared. The curricula vitae of these persons, together with a ballot, will be sent to a representative number of consumer organizations that have been determined to be eligible to vote for consumer representatives in accordance with paragraph (c)(3) of this section. After 4 days have elapsed, the Advisory Committee Oversight and Management Staff will contact the consumer organizations by telephone and elicit their votes. The candidate who has received the highest number of votes will be selected. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

* * * * *

Dated: March 23, 2010.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2010–6861 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0143 (Formerly Docket Nos. D01–05–094 and Docket No. USCG–01–06–052)]

RIN 1625–AA11

Regulated Navigation Area: Narragansett Bay, RI and Mount Hope Bay, RI and MA, Including the Providence River and Taunton River

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule modifies provisions contained in the existing Regulated Navigation Area (RNA) that were originally implemented to address severe shoaling in the Providence River. Based on recommendations made in several public comments responding to the notice of proposed rulemaking (NPRM), this rule includes additional navigation safety measures for vessels transiting Narragansett Bay, namely a requirement to make periodic Safety Signal (SECURITE) calls at certain points along the transit, and a requirement to maintain a minimum underkeel clearance to prevent groundings. Based on recommendations made in several other comments, some measures proposed in the NPRM for the Taunton River and Mount Hope Bay in the vicinity of the two Brightman Street bridges have not been adopted and are therefore not included in this final rule.

DATES: This rule is effective April 28, 2010.

ADDRESSES: Comments and materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0143 and are available online by going to *http://www.regulations.gov,* inserting USCG–2009–0143 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 Mr. Edward G. LeBlanc at Coast Guard Sector Southeastern New England; telephone 401–435–2351, e-mail *Edward.G.LeBlanc@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 November 21, 2005, the Coast Guard issued a **Federal Register** notice and request for comments at 70 FR 70052, under the heading "Navigation and Waterways Management Improvements, Providence River Regulated Navigation Area, Narragansett Bay, Rhode Island and Mt. Hope Bay, MA." The notice was prompted primarily by two events: (1) The U.S. Army Corps of Engineers (USACE) was nearing completion of a major maintenance dredging project in the Providence River, and (2) enactment of Public Law 109–59, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) signed on August 10, 2005 by President Bush. Section 1948 of SAFETEA–LU resulted in retention of the old Brightman Street Bridge across the Taunton River between Somerset and Fall River, MA. The proximity of the old and new Brightman Street bridges to each other, which will both remain in place as a result of SAFETEA–LU, prompted formal adoption of the navigation safety measures that are currently practiced either voluntarily or through Captain of the Port (COTP) orders to particular commercial vessels.

We received three public comments in response to our November 2005 notice. On May 26, 2006, we published a **Federal Register** notice of proposed rulemaking at 71 FR 30108, under the heading "Regulated Navigation Area: Narragansett Bay, RI and Mount Hope Bay, MA, including the Providence River and Taunton River". We received six comments in response to the NPRM, including requests from the Rhode Island Attorney General and the city of Fall River, Massachusetts, that the Coast Guard extend the public comment period and hold public hearings on the regulations. On October 6, 2006, we published a notice extending the public comment period and announcing two public meetings in the **Federal Register** at 71 FR 57893, under the heading "Navigation and Waterways Management Improvements, Providence River Regulated Navigation Area, Narragansett Bay, Rhode Island and Mt. Hope Bay, MA". Public meetings were subsequently held on October 16, 2006 in Fall River, and on October 19, 2006, in Warwick, Rhode Island. The public comment period ended on November 1, 2006. Thirteen months later in December 2007, USACE completed its major maintenance dredging of the Providence River, restoring the waterway to its authorized controlling depth of 40 feet. Completion of the dredging project removed the need for certain navigation safety measures implemented in 1994 to address shoaling in the Providence River, and also prompted adoption of this final rule. The removal of the navigation safety measures is discussed below.

Background and Purpose

1. *Providence River:* On May 1, 1994, the Coast Guard established a Regulated Navigation Area in the Providence River, Providence, Rhode Island, described at 33 CFR 165.122 (59 FR 18487, April 19, 1994). It was designed to protect the maritime community from hazards to navigation resulting from the extreme shoaling that occurred in the northern section of the Providence River Channel.

Generally, the existing RNA imposes certain navigation safety measures in various segments of the Providence River including, among other requirements, a maximum draft of 38 feet for most vessels, one-way vessel traffic in certain portions of the river, and a requirement that vessels over 65 feet in length make periodic SECURITE calls via VHF radio. In September 2005, USACE substantially completed a major maintenance dredging of the Providence River to remove most shoaling and restore the channel to a depth of 40′ at Mean Lower Low Water (MLLW), and a minimum channel width of 600′. While most shoaling was removed, there remained nine rock mounds that required blasting (as opposed to dredging) and removal. Those nine rock mounds were not blasted and removed until September 2007, and a final "Results of Survey" was issued by USACE on December 14, 2007.

The restoration of the Providence River Channel to the above described dimensions provides sufficient depth and width for commercial and recreational vessels of appropriate length, breadth, and draft, to navigate safely within the channel. Consequently, because the original conditions that warranted the RNA no longer exist, we are making modifications as described in this final rule.

We are also adopting some navigation safety measures that were recommended in the public comments. These measures include maintaining an under-keel clearance equal to at least 10% of a vessel's draft when not assisted by tugs, and a requirement for certain vessels to make SECURITE calls at certain points during their transit to notify other waterway users of their intentions.

2. *Taunton River:* Construction of a new Brightman Street bridge (the new bridge) across the Taunton River approximately 1100 feet north of the existing Brightman Street Bridge (the old bridge) has presented navigation challenges, particularly for larger self-propelled commercial vessels. The opening of the old bridge is only 98 feet while the opening of the new bridge is 200 feet, and the openings of the two bridges are not aligned with each other. This configuration requires commercial vessels to transit through one opening, stop, be pushed transversely (sideways) by tugs for approximately 100 feet to align with the next bridge opening, and then proceed forward. Local marine pilots, working with operators of commercial vessels delivering coal and oil to the electric power plant north of the bridges, have devised a method of transiting the two bridges that involves the use of a marine pilot, three tugs (in most cases), and navigating only in daylight, only when steady winds are no greater than 12 knots and wind gusts are no greater than 15 knots, and transiting outbound only on a flood tide. These voluntary measures were initially intended to be temporary and employed only until the old bridge was demolished after completion of the new bridge, in accordance with the bridge construction permit issued by the Coast Guard on December 5, 1997.

However, section 1948 of SAFETEA–LU prohibits the expenditure of Federal funds for the demolition of the old bridge. It states: "Notwithstanding any Federal law, regulation, or policy to the contrary, no Federal funds shall be obligated or expended for the demolition of the existing Brightman Street Bridge connecting Fall River and Somerset, Massachusetts, and the existing Brightman Street Bridge shall be maintained for pedestrian and bicycle access, and as an emergency service route." We believe the practical effect of this law is that the old bridge will remain in place.

The unique maneuvers required to navigate safely between these two bridges are of concern to the Coast Guard; however, the safety measures proposed in the NPRM are the ones currently being practiced by the maritime community either voluntarily or through COTP orders to specific commercial vessels. Further, the sole commercial entity (a coal-fire power plant) north of the two Brightman Street bridges which received bulk cargo (coal) via ship or barge has shut down, further reducing marine traffic through the bridges. Consequently, the Coast Guard believes further regulation is not necessary as the current system in place provides an appropriate and effective method to address the navigation safety issues related to the fewer (and smaller) commercial vessels that may now transit the Taunton River and Brightman Street bridges. The navigation safety measures are discussed below.

Discussion of Comments and Changes

Three comments were submitted in response to our November 2005 notice and six comments were submitted in response to our May 2006 NPRM. After we extended the NPRM comment period, and in response to our two October 2006 public meetings, we received 57 additional written and 106 verbal comments, respectively. Most comments expressed opposition to a proposed liquefied natural gas (LNG) waterfront facility on the Taunton River in Fall River, MA, but few comments addressed the current RNA or suggested any specific navigation safety measures.

Several comments in particular captured the sentiment of most. In one comment, the writer was "appalled that the United States Coast Guard is even contemplating modifying the existing Regulated Navigation Area in Providence River, Narragansett Bay, and Mount Hope Bay which would then allow LNG tankers to use these waterways." Another comment suggested that the proposed regulations were "inextricably linked to the

[Weaver's Cove Energy] LNG vessel transit plan * * *." A third comment suggested that the proposed regulations were "creative maneuvers to bring LNG tankers in Fall River." A commenter at a public meeting stated that the proposed regulations would allow LNG passage to Fall River "by right."

However, as stated by the Captain of the Port at the October 2006 public meetings, "it is important to note that these proposed regulations are intended to address navigation safety issues as they currently exist for vessels and mariners currently using the waterways of Narragansett Bay and Mount Hope Bay, such as the ships and barges carrying coal and occasional fuel oil that transit through the Brightman Street bridges some 50 times each year in connection with deliveries to the power plant in Somerset."

As stated earlier in this preamble, the unique maneuvers required to navigate safely between these two bridges concern the Coast Guard. But the safety measures proposed in the NPRM are currently being practiced by the maritime community either voluntarily or through Captain of the Port orders to specific commercial vessels. And, the sole commercial entity (a coal-fire power plant) north of the two Brightman Street bridges which received bulk cargo (coal) via ship or barge has shut down, further reducing marine traffic through the bridges. Consequently, the Coast Guard believes further regulation for the Taunton River and Brightman Street Bridges is not necessary as the current system in place provides an appropriate and effective method to address the navigation safety issues related to the fewer (and smaller) commercial vessels that may now transit the Taunton River and Brightman Street bridges.

Specifically, the NPRM included proposed maximum weather parameters and a proposed requirement for assist tugs for commercial vessels transiting through the two Brightman Street bridges. Those proposed requirements have been removed. Maximum weather parameters are currently defined, when necessary, via a Captain of the Port order. Tug assistance is currently dictated by either the Federal or state licensed pilot directing a commercial vessel through the two Brightman Street bridges, or via a Captain of the Port order on a case by case basis as conditions dictate. The Coast Guard believes those methods are currently sufficient to provide the appropriate level of safety to ensure the safe navigation of vessels through the waterway.

One comment addressed the condition of the fendering system at the old Brightman Street Bridge. The Massachusetts Highway Department, the bridge owner, completed a major renovation project in September 2007 that restored all of the bridge fendering to its original design specifications.

Two comments addressed the physical condition of the old bridge and the navigation concerns related to the waterway configuration resulting from the proximity of the old and new bridges. Specifically, there is only 1100 feet of distance between the bridges, the opening of the old bridge is only 98 feet while the opening of the new bridge is 200 feet, and the openings of the two bridges are not aligned with each other.

This configuration requires a vessel to transit through one opening, stop, be pushed transversely (sideways) by tugs for approximately 100 feet to align with the next bridge opening, and then proceed forward.

One comment stated that it "strongly advocates physical demolition and removal of the existing [Brightman Street] bridge * * *." Another comment discussed at some length the need to demolish the old bridge once the new bridge was completed. Those comments are more appropriately addressed via the mechanisms contemplated by 33 CFR part 116, "Alterations of Unreasonably Obstructive Bridges." That part describes the procedures by which the Coast Guard determines a bridge to be an unreasonable obstruction to navigation. Consequently, the Commander, First Guard District, forwarded a letter on April 3, 2006, to Commandant (G–PWB) (currently CG–5411), Coast Guard Headquarters, Washington, DC, to begin the 33 CFR part 116 process regarding the old bridge. On May 8, 2007, the Coast Guard issued a "Navigation Review" regarding the old and new Brightman Street bridges which found, in part, that retention of the old bridge "makes navigation more difficult" in that area of the Taunton River, but recommended no specific action. As a follow-up to this report, the Coast Guard's Office of Bridge Administration will undertake further investigation in accordance with the procedures set forth in 33 CFR part 116. Any such effort, however, is separate and apart from this rulemaking.

One comment suggested:

(1) A reduction in several voice reporting requirements via VHF radio in Narragansett Bay and the Providence River;

(2) Removal of the one-way traffic restriction in the Providence River;

(3) Addition of a voice reporting requirement via VHF radio for vessels in Narragansett Bay either enroute to or from Mount Hope Bay; and

(4) Addition of an under-keel clearance requirement for deep draft vessels transiting Narragansett Bay.

The major dredging project completed by USACE in December 2007 has reduced the need for voice reporting requirements in Narragansett Bay and the Providence River, and removed the need for one-way traffic restrictions in the river. Consequently, the commenter's first two recommendations have been incorporated into this rule.

We believe that voice reporting requirements recommended in the aforementioned comment are prudent and should enhance navigation safety. Accordingly, those reporting requirements are also included in this rule.

The commenter's recommendation for an under-keel clearance requirement was also considered. In the NPRM for this rule, specific maximum drafts were proposed. The maximum drafts varied according to the channel depth in which a vessel was navigating. One comment to the NPRM (the only comment addressing the draft issue) recommended that a blanket minimum under-keel clearance requirement of 10% of a vessel's draft be maintained, which would allow a safety factor to account for variables such as wave height, squat, accuracy of tidal predictions, water density, etc. We re-examined the issue of under-keel clearance and found that under-keel clearance standards are in place in at least one other major port (Los Angeles/Long Beach). Additionally, Federal regulations mandating under-keel clearance for single-hull tank ships (including those calling on Narragansett and Mount Hope bays) already exist at 33 CFR 157.455. We agree that a blanket under-keel clearance requirement is less confusing than the variable draft restrictions proposed in the NPRM. Therefore, we have adopted a standard under-keel clearance requirement in this final rule.

One comment suggested that the Coast Guard's determination that this rulemaking is categorically excluded from further environmental review under the National Environmental Policy Act (NEPA) was incorrect, and that a full NEPA analysis was required. It argued that the proposed regulations create "substantial controversy" because they are "inextricably linked" to the Weaver's Cove LNG proposal.

Another comment disagreed with our finding that the proposed regulations would "not have a substantial economic impact" on small entities. It cited a purported lack of economic analysis of the impact of ship transits with "volatile cargo" and the impact(s) to maritime

enterprise of security zones around LNG vessels transiting through Narragansett Bay.

We disagree that further environmental or economic analysis is required. The Coast Guard did conduct a NEPA review of this rule and determined that no additional analysis was necessary based upon the findings that any foreseeable impacts would not be significant. Further economic analysis is not required because the effect of this rule would not be significant: It only removes some more restrictive navigation safety measures, adds a standard under-keel clearance requirement, and modifies already-existing voice reporting requirements in the affected waterways.

This final rule makes the following modifications to the current RNA at 33 CFR 165.122:

1. Remove certain navigation restrictions and minimum visibility requirements in the Providence River, especially for vessels with drafts of 35 feet or greater;

2. Remove the one-way-traffic restriction for vessels over 65 feet in length that currently exists in certain areas of the Providence River;

3. Reduce the number of required SECURITE calls while transiting Narragansett Bay and the Providence River; and

4. Define minimum under-keel clearance requirements for vessels transiting within the RNA.

This final rule was prompted primarily by the completion of a major dredging project in the Providence River. Navigation safety measures implemented in 1994 to address the shoaling in that river are no longer required. This final rule is promulgated under the authority of 33 U.S.C. 1321, pursuant to the re-delegation of that authority contained in 33 CFR 1.05–1(g)(4). Vessels or persons violating this section may be subject to the civil and criminal penalties set forth in 33 U.S.C. 1232.

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 under the regulatory policies and procedures of DHS is unnecessary. The effect of this rule would not be significant as it removes some more restrictive navigation safety measures, adds a standard under-keel clearance requirement, and modifies already-existing voice reporting requirements in the affected waterways. This rule will be entered into the local notice to mariners, and maritime advisories will be broadcast.

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 may affect the following entities, some of which might be small entities: the owners or operators of vessels 65 feet in length or greater transiting the waterways of Narragansett Bay and the Providence River.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule only modifies current regulations and/or codifies current navigation practices. Because of the changes to the previously proposed regulatory text discussed above, this rule does not impose new requirements which would affect vessels' schedules or their ability to transit the RNA, nor does it require the purchase of any new equipment or the hiring of any additional crew.

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.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule does 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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

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

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g) of the Instruction. This rule fits the category selected from paragraph (34)(g), as it establishes a Regulated Navigation Area. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise § 165.122 to read as follows:

§ 165.122 Regulated Navigation Area: Navigable waters within Narragansett Bay and the Providence River, Rhode Island.

(a) *Description of the regulated navigation area (RNA).* The Regulated Navigation Area (RNA) encompasses all of the navigable waters of Narragansett Bay north of the COLREGS demarcation line and west of the Mt. Hope Bridge, and all of the navigable waters of the Providence River from Conimicut Point to the Providence hurricane barrier.

(b) *Regulations.* (1) All commercial vessels must:

(i) Maintain a minimum 10% of the vessel's draft as an under-keel clearance when not assisted by tugs, or when not moored at an assigned berth. Under-keel clearance is the minimum clearance available between the deepest point on the vessel and the bottom of the waterway, in calm water.

(ii) Have at least one mile of visibility to transit the Providence River between 41°43′01.4″ N; 071°20′41.7″ W (Conimicut Light (LLNR 18305)) and 41°47′38.8″ N; 071°22′46.7″ W (Channel Light 42 (LLNR 18580)).

(2) Vessels over 65 feet in length inbound for berths in the Providence River are required to make Safety Signal (SECURITE) calls on both VHF channels 13 and 16 at the following geographic locations:

(i) Pilot Boarding Area;

(ii) Abeam of Castle Hill;

(iii) Abeam of Sandy Point;

(iv) Abeam of 41°43′01.4″ N; 071°20′41.7″ W (Conimicut Point Light (LLNR 18305));

(v) Abeam of Sabin Point; and

(vi) Upon mooring.

(3) Vessels over 65 feet in length inbound for berths in Mount Hope Bay or in the Taunton River are required to make SECURITE calls on both VHF channels 13 and 16 at the following geographic locations:

(i) Pilot Boarding Area;

(ii) Abeam of Castle Hill;

(iii) Abeam of Sandy Point; and

(iv) At position 41°39′32.4″ N; 071°14′ 02.6″ W (Mount Hope Bay Junction Lighted Gong Buoy "MH" (LLNR 18790)).

(4) Vessels over 65 feet in length outbound for sea down the Providence River Channel shall make SECURITE calls on VHF channels 13 and 16 at the following geographic locations:

(i) One-half hour prior to departure from the berth;

(ii) At departure from the berth;

(iii) Abeam of Sabin Point;

(iv) Abeam of Gaspee Point; and

(v) Abeam of position 41°43′01.4″ N; 071°20′41.7″ W (Conimicut Light (LLNR 18305)).

(5) Vessels over 65 feet in length outbound for sea down from Mount Hope Bay through Narragansett Bay are required to make SECURITE calls on VHF channels 13 and 16 at the following geographic locations:

(i) One-half hour prior to departure from the berth;

(ii) At departure from the berth; and

(iii) At position 41°39′32.4″ N; 071°14′ 02.6″ W (Mount Hope Bay Junction Lighted Gong Buoy "MH" (LLNR 18790)).

(6) Vessels 65 feet and under in length, and all recreational vessels, when meeting deep draft commercial vessel traffic in all locations within this RNA shall keep out of the way of the oncoming deep draft commercial vessel. Nothing in this regulation, however, relieves a vessel of any duty prescribed in the Inland Navigation Rules (set forth in 33 U.S.C. 2005 *et seq.*)

(7) The Captain of the Port (COTP) Southeastern New England may authorize a deviation from these regulations. Parties wishing to request a deviation must do so in advance by contacting the COTP Southeastern New England, at 508–457–3211, or via VHF Channel 13 (156.7 MHz), or VHF channel 16 (156.8 MHz). Any person or vessel receiving permission from the

COTP to deviate from these regulations must comply with any specific instructions provided by the COTP.

(c) *Enforcement.* Violations of this RNA should be reported to the COTP Southeastern New England at 508–457–3211. Persons found in violation of these regulations may be subject to civil or criminal penalties as provided for in 33 U.S.C. 1232.

Dated: March 6, 2010.

Joseph L. Nimmich,

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

[FR Doc. 2010–6859 Filed 3–26–10; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0526; FRL–9130–8]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision To Control Volatile Organic Compound Emissions in the Houston/Galveston/Brazoria 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Texas State Implementation Plan (SIP). The revision adds additional requirements to control volatile organic compound (VOC) emissions from storage tanks, transport vessels and marine vessels in the Houston/Galveston/Brazoria (HGB) 1997 8-hour ozone nonattainment area, which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. Specifically, this revision subjects owners or operators of VOC storage tanks, transport vessels, and marine vessels located in the HGB 1997 8-hour ozone nonattainment area to more stringent control, monitoring, and recordkeeping requirements. EPA is approving the SIP revision because it will help lower ozone levels in the HGB area by reducing VOC emissions. EPA is approving the revision pursuant to section 110 and part D of the Clean Air Act (CAA).

DATES: This direct final rule will be effective May 28, 2010 without further notice unless EPA receives relevant adverse comments by April 28, 2010. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA–R06–OAR–2007–0526, by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.*
- Follow the online instructions for submitting comments.
- *EPA Region 6 "Contact Us" Web site: http://epa.gov/region6/r6coment.htm.* Please click on "6PD (Multimedia)" and select "Air" before submitting comments.
- *E-mail:* Mr. Guy Donaldson at *donaldson.guy@epa.gov.* Please also send a copy by e-mail to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.
- *Fax:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), at fax number 214–665–7242.
- *Mail:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733.
- *Hand or Courier Delivery:* Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Such deliveries are accepted only between the hours of 8 a.m. and 4 p.m. weekdays, and not on legal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket No. EPA–R06–OAR–2007–0526. 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.

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 Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733. The file will be made available by appointment for public inspection in the Region 6 FOIA Review Room between the hours of 8:30 a.m. and 4:30 p.m. weekdays except for legal holidays. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214–665–7253 to make an appointment. If possible, please make the appointment at least two working days in advance of your visit. There will be a 15 cent per page fee for making photocopies of documents. On the day of the visit, please check in at the EPA Region 6 reception area at 1445 Ross Avenue, Suite 700, Dallas, Texas.

The State submittal is also available for public inspection during official business hours, by appointment, at the Texas Commission on Environmental Quality, Office of Air Quality, 12124 Park 35 Circle, Austin, Texas 78753.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6645; fax number 214–665–7263; e-mail address *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever "we", "us", or "our" is used, we mean the EPA.

Outline

I. What Action Is EPA Taking?
II. What Is a SIP?
III. What Is the Background for This Action?

IV. What Is EPA's Evaluation of the Revision?
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

We are approving a revision to the Texas SIP that adds additional requirements to control VOC emissions from storage tanks, transport vessels and marine vessels in the HGB area, which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties. The revision was adopted by the State of Texas on May 23, 2007 and submitted to EPA on June 13, 2007. The revision amended Title 30 of the Texas Administrative Code, Chapter 115 (30 TAC 115) by adding a new section 115.110 (Definitions) and revising sections 115.112–115.117, 115.119, 115.541–115.547 and 115.549. The revision requires that tanks and vessels in the HGB area store volatile organic liquids at petroleum refineries, chemical plants, gasoline storage terminals, bulk terminals, pipeline breakout stations, and oil and natural gas production sites under additional controls.

Specifically, for the HGB area the revision requires:

- More stringent controls for tank fittings on floating roof tanks and restrictions on floating roof tank landings;
- Control of VOC flash emissions from crude oil and condensate storage tanks at oil and gas exploration and production sites and pipeline breakout stations with uncontrolled flash emissions greater than 25 tons per year;
- Control of VOC emissions from the degassing of storage tanks with a nominal capacity of 250,000 gallons or more, or with a nominal capacity of 75,000 gallons or more storing liquids with a true vapor pressure greater than 2.6 pounds per square inch absolute (psia);
- Control and monitoring of degassing vapors from storage vessels, transport vessels, and marine vessels; and
- Recordkeeping to validate compliance.

For more information on the requirements please see our Technical Support Document (TSD) found in the electronic docket or 30 TAC 115, Subchapter B, Division 1 (Storage of Volatile Organic Compounds) and Subchapter F, Division 3 (Degassing or Cleaning of Stationary, Marine and Transport Vessels). The electronic docket can be found at the Web site *http://www.regulations.gov* (Docket number EPA–R06–OAR–2007–0526).

Control of VOC emissions will help the area reduce ambient levels of ozone. Our approval will make the revised regulations federally enforceable. We are approving the revision pursuant to section 110 and part D of the CAA and EPA's regulations.

We are publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no relevant adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on May 28, 2010 without further notice unless we receive relevant adverse comment by April 28, 2010. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

II. What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that air quality meets the national ambient air quality standards (NAAQS) established by EPA. NAAQS are established under section 109 of the CAA and currently address six criteria pollutants: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

A SIP is a set of air pollution regulations, control strategies, other means or techniques, and technical analyses developed by the state, to ensure that the state meets the NAAQS. It is required by section 110 and other provisions of the CAA. A SIP protects air quality primarily by addressing air pollution at its point of origin. A SIP can be extensive, containing state regulations or other enforceable documents, and supporting information such as emissions inventories, monitoring networks, and modeling demonstrations. Each state must submit regulations and control strategies to EPA for approval and incorporation into the federally-enforceable SIP.

III. What Is the Background for This Action?

Inhaling ozone, even at low levels, can trigger a variety of health problems including chest pains, coughing, nausea, throat irritation, and congestion. It can also worsen bronchitis and asthma, and reduce lung capacity. VOCs and oxides of nitrogen (NO_x) are known as "ozone precursors", as they react with oxygen and sunlight to form ozone. Motor vehicle exhaust and industrial emissions, gasoline vapors and chemical solvents emit VOC and NO_x. Controlling sources of VOC and NO_x emissions can lower ozone levels in the ambient air.

On July 18, 1997, we promulgated an 8-hour ozone standard of 0.08 parts per million (ppm), which is more protective than the previous 1-hour ozone standard (62 FR 38855).[1] On April 30, 2004, we published designations and classifications for the 1997 8-hour ozone standard (69 FR 23858). The HGB area, which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery and Waller counties was classified as a moderate ozone nonattainment area, with an attainment date no later than June 15, 2010. On October 1, 2008, at the request of the Governor of Texas, we reclassified the area as a severe ozone nonattainment area with an attainment date no later than June 15, 2019 (73 FR 56983).

The State of Texas found that certain types of VOC storage tank emissions, including degassing, flash, and floating roof landing loss emissions, have been unreported or underreported in the HGB area. The State revised the VOC control regulations in the SIP to help reduce emissions from these sources in the HGB area. The revision to the SIP was adopted by the State on May 23, 2007 and submitted it to EPA on June 13, 2007.

IV. What Is EPA's Evaluation of the Revision?

We have evaluated the Chapter 115 revision and find they enhance the SIP by reducing emissions from VOC storage tanks, transport vessels and marine vessels in the HGB area. We have reached this conclusion because these revisions for the HGB area require additional controls on VOC emissions from these sources. By lowering VOC emissions, these rules will help lower ozone levels in the HGB area. In addition, these revisions improve rules that EPA previously approved (73 FR

[1] EPA issued revised 8-hour ozone standards on March 27, 2008 (73 FR 16436) and proposed to set different standards on January 19, 2010 (75 FR 2938). This process is ongoing and does not affect EPA's action here.

10383, February 27, 2008) as meeting the Reasonably Available Control Technology of the Clean Air Act. Therefore, we are finding that these rules continue to implement RACT for this source category. For a discussion of the rules and how the rules improve the SIP see the technical support document for this action. For more information on our evaluation, please see our TSD found in the electronic docket.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action 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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2010. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Dated: March 12, 2010.

Al Armendariz,

Regional Administrator, Region 6.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS—Texas

■ 2. The table in § 52.2270(c) entitled "EPA Approved Regulations in the Texas SIP" under Chapter 115 (Reg 5) is amended by:

■ a. Adding an entry for Section 115.110 under Subchapter B, Division 1, in numerical order.

■ b. Revising the entries for Sections 115.112–115.117 and 115.119 under Subchapter B, Division 1.

■ c. Revising the entries for Sections 115.541–115.547 and 115.549 under Subchapter F, Division 3.

The revisions and additions read as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE TEXAS SIP

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Chapter 115 (Reg 5)—Control of Air Pollution from Volatile Organic Compounds				

EPA-APPROVED REGULATIONS IN THE TEXAS SIP—Continued

State citation	Title/subject	State approval/submittal date	EPA approval date	Explanation
*	*	*	*	*
Subchapter B—General Volatile Organic Compound Sources				
Division 1. Storage of Volatile Organic Compounds				
Section 115.110	Definitions	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.112	Control Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.113	Alternate Control Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.114	Inspection Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.115	Approved Test Methods	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.116	Monitoring and Recordkeeping Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.117	Exemptions	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.119	Counties and Compliance Schedules	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
*	*	*	*	*
Subchapter F—Miscellaneous Industrial Sources				
*	*	*	*	*
Division 3: Degassing or Cleaning of Stationary, Marine, and Transport Vessels				
Section 115.541	Emission Specifications	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.542	Control Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.543	Alternate Control Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.544	Inspection Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.545	Approved Test Methods	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.546	Monitoring and Recordkeeping Requirements	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.547	Exemptions	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
Section 115.549	Counties and Compliance Schedules	5/23/2007	3/29/2010 [Insert FR page number where document begins].	
*	*	*	*	*

[FR Doc. 2010–6795 Filed 3–26–10; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 05–195; WC Docket No. 03–109; FCC 07–150]

Universal Service Support for Low-Income Consumers; Correction

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: The Federal Communications Commission published a document in the **Federal Register** on Monday, September 24, 2007 (72 FR 54214), revising Commission rules pertaining to the recordkeeping requirements for eligible telecommunications carriers (ETCs) receiving Universal Service low-income support. That document inadvertently deleted a sentence from 47 CFR 54.417(a). This document corrects the final regulation by revising this section.

DATES: Effective on March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Jamie Susskind, Wireline Competition Bureau, Telecommunications Access Policy Division at (202) 418–7400 (voice), (202) 418– 0484 (TTY), or e-mail at *Jamie.Susskind@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

In a Report and Order (FCC 07–150), the Commission adopted measures to safeguard the Universal Service Fund (“USF”) from waste, fraud, and abuse. Among other actions taken in the Report and Order, the Commission revised the requirement that ETCs maintain certain documentation as long as the consumer receives Lifeline service from the ETC or until the ETC is audited by the Universal Service Administrative Company (“USAC”).

Need for Correction

As published, the final regulation inadvertently omitted a sentence from 47 CFR 54.417(a). This error needs to be corrected.

List of Subjects in 47 CFR Part 54

Communications common carriers, Infants and children, Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

■ Accordingly, 47 CFR part 54 is corrected by making the following correcting amendments:

PART 54—UNIVERSAL SERVICE

■ 1. The authority citation for part 54 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, and 254 unless otherwise noted.

■ 2. In § 54.417, revise paragraph (a) to read as follows:

§ 54.417 Recordkeeping requirements.

(a) Eligible telecommunications carriers must maintain records to document compliance with all Commission and state requirements governing the Lifeline/Link Up programs for the three full preceding calendar years and provide that documentation to the Commission or Administrator upon request. Notwithstanding the preceding sentence, eligible telecommunications carriers must maintain the documentation required in §§ 54.409(d) and 54.410(b)(3) for as long as the consumer receives Lifeline service from that eligible telecommunications carrier. If an eligible telecommunications carrier provides Lifeline discounted wholesale services to a reseller, it must obtain a certification from that reseller that it is complying with all Commission requirements governing the Lifeline/Link Up programs.

* * * * *

[FR Doc. 2010–6968 Filed 3–26–10; 8:45 am]
BILLING CODE P

Proposed Rules

Federal Register
Vol. 75, No. 59
Monday, March 29, 2010

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0003; Directorate Identifier 2007–NM–251–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–200 and –300 Series Airplanes, and A340–200, –300, –500 and –600 Series Airplanes

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

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

SUMMARY: We are revising an earlier NPRM for the products listed above. This action revises the earlier NPRM by expanding the scope. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as: Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators. Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.

The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. The proposed AD would require actions to correct the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by April 23, 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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330-A340@airbus.com*; Internet *http://www.airbus.com.* You may review copies of the referenced 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.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations 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: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2009–0003; Directorate Identifier 2007–NM–251–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

We proposed to amend 14 CFR part 39 with an earlier NPRM for the specified products, which was published in the **Federal Register** on January 13, 2009 (74 FR 1649). That earlier NPRM proposed to correct an unsafe condition for the products listed above.

Since that NPRM was issued, we have determined that the actions specified in paragraph (f)(1)(ii) of the NPRM need to be clarified in order for us to provide adequate notice and opportunity for public comment. Paragraph (g)(1)(ii) of the NPRM specifies to inspect flap tracks 2 and 4 and do all applicable corrective actions (replacing damaged parts). This supplemental NPRM would also require inspecting flap tracks 1, 3, and 5.

Explanation of Revised Service Information

Airbus has issued the revised service information specified in the following table. We have added the applicable revised service information to paragraph (g) of this supplemental NPRM as the appropriate sources of service information for accomplishing the required actions.

SERVICE INFORMATION

Airbus mandatory service bulletin—	Revision—	Dated—
A330–27–3151, including Appendix 01	01	March 19, 2008.
A330–27–3152, including Appendices 1 and 2	01	March 19, 2008.
A330–27–3152, including Appendices 1 and 2	02	September 23, 2008.
A340–27–4151, including Appendix 01	01	March 19, 2008.
A340–27–4152, including Appendices 1 and 2	01	March 19, 2008.
A340–27–4152, including Appendices 1 and 2	02	September 23, 2008.
A340–27–5040, including Appendix 1	01	March 19, 2008.
A340–27–5040, including Appendix 01	02	September 23, 2008.

No additional work is necessary for airplanes on which the actions specified in the service information in the following table, and referred to in the original NPRM as the appropriate sources of service information for doing the proposed actions, were done.

CREDIT SERVICE INFORMATION

Airbus mandatory service bulletin—	Revision—	Dated—
A330–27–3151	Original	August 9, 2007.
A330–27–3152	Original	August 9, 2007.
A340–27–4151	Original	August 9, 2007.
A340–27–4152	Original	August 9, 2007.
A340–27–5040	Original	August 9, 2007.

We have added a new paragraph (g)(3) to this AD to include credit for previous accomplishment of the specified actions using the applicable service information listed in the Credit Service Information table, above.

Comments

We have considered the following comments received on the earlier NPRM.

Request To Clarify Actions in the Latest Service Bulletin Revisions

The Air Transport Association (ATA), on behalf of Northwest Airlines (NWA), states that the service bulletins referred to in the original NPRM have been revised and asks which revisions of the service bulletins should be used to accomplish the actions. NWA notes that the inspection procedures specified in Airbus Mandatory Service Bulletin A330–27–3152, Revision 02, dated September 23, 2008, are more restrictive than those in the original issue of Airbus Mandatory Service Bulletin A330–27–3152, dated August 9, 2007. NWA adds that the original issue of Airbus Mandatory Service Bulletin A330–27–3152, dated August 9, 2007, does not specify parts replacement for Type 1 and Type 2 category findings during the inspection; however, Airbus Mandatory Service Bulletin A330–27–3152, Revision 02, specifies replacement of the input gear box (IPGB) within 18 months. NWA asks that the intent of the inspection and replacement requirements be clarified.

We agree that some clarification is necessary, as follows. As stated previously, the latest revisions of Airbus Mandatory Service Bulletins A330–27–3152, Revision 02, and A340–27–4151, Revision 01, are cited in the supplemental NPRM for accomplishing the proposed actions. The changes in Airbus Mandatory Service Bulletins A330–27–3152, Revision 02, and A340–27–4151, Revision 01, are minor and no additional work is necessary for airplanes on which the actions have been done using those revisions.

The NPRM proposed to require replacing all damaged parts before further flight, regardless of the type of damage; however, the revised service information changed the actions for Type 2 damaged parts from "no replacement required" to "replacement within 18 months." This action is only applicable if Type 2 damaged parts are found. It is not necessary to replace Type 1 damaged parts.

Requests To Extend Compliance Time

ATA, on behalf of its member NWA, also notes that the compliance time of 18 months for the IPGB replacement, and a compliance time of 20 months for the initial inspection, as specified in paragraph (g)(2) of the original NPRM, should be extended to 24 months to align with its "C" check intervals. NWA adds that the Airbus service information refers to General Electric (Smiths) Service Bulletin 6975–27–018, dated August 2007, to define Type 2 damage findings. NWA states that allowing a 24-month compliance period, instead of 18 months, for Type 2 damage findings on airplanes up to 6 years old would still require IPGB replacement within 8 years since the airworthiness certification date, which is substantially less than the 12 years specified in the Airbus service information and the EASA AD. In addition, NWA notes that new grease is applied to the splined area following the 6-year inspection, reducing additional wear and corrosion during the 24-month period before IPGB replacement.

We disagree with the commenter's request that the compliance time should be extended to 24 months to align with "C" check intervals. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required actions within a period of time that corresponds to the normal scheduled maintenance for most affected operators. In light of these items, we have determined that an 18-month compliance time for the IPGB replacement, and a 20-month compliance time for the inspections specified in paragraph (g)(2) of this supplemental NPRM, are appropriate. However, under the provisions of paragraph (h)(1) of the supplemental NPRM, we will consider requests to adjust the compliance time if sufficient data are submitted to substantiate that the new compliance time would provide an acceptable level of safety. We have made no change to the original NPRM in this regard.

Another commenter, Elvio Marinelli, asks that the compliance time of "before further flight" for doing the corrective actions specified in paragraphs (f)(1)(i), (f)(1)(ii), (f)(1)(iii), (f)(1)(iv), and (f)(2) of the original NPRM, be changed to match the language in the EASA AD which requires accomplishing the corrective actions within the compliance time defined in Airbus Mandatory Service Bulletins A330–27–3152 and A340–27–4151. The commenter adds that the compliance time in Airbus Mandatory Service Bulletins A330–27–3152 and A340–27–4151 allows continued flight with a certain extent of damage to the down drive shafts (DDS) and the IPGB, which defers the replacement.

We acknowledge that the original NPRM proposed to require replacing all damaged parts before further flight, regardless of type of damage; however, the revised service information changed the actions for Type 2 damaged parts. Therefore, we have revised this supplemental NPRM to clarify that Type 3 damaged parts must be repaired before further flight and that certain Type 2 damaged parts must be repaired within 18 months. It is not necessary to replace Type 1 damaged parts.

Request To Remove Reporting Requirement

ATA, on behalf of its member NWA, asks that the requirement to report inspection findings to Airbus be removed from the original NPRM. NWA states that the referenced Airbus service information specifies that findings from each inspection be sent to Airbus. NWA asks that the original NPRM clearly state that this is not a requirement.

We disagree with the commenter's request that the reporting requirement should be removed from this supplemental NPRM, or language added to state that no reporting is required. We have determined that reporting the inspection findings will enable the manufacturer to obtain better insight into the prevalence of the damage. Access to all findings will also help the manufacturer to develop final action to address the identified unsafe condition in a timely manner. We have made no change to the proposed AD in this regard.

Request To Include Parts Cost

ATA, on behalf of its member NWA, asks that a parts cost of $11,000 per airplane for the corrective action be added to the original NPRM. ATA states that the cost of compliance is underestimated because the parts cost was not included. NWA notes that industry data provided by Airbus indicate that 10 to 15 percent of all DDS and IPGB parts inspected require replacement. NWA adds that using these industry findings, rates and repair costs provided to NWA by the supplier are approximately $11,000.

We disagree with the commenter's request that the parts cost be included in this supplemental NPRM. The data in the Costs of Compliance section (below) are limited to the cost of actions actually required by the supplemental NPRM. The cost analysis in AD rulemaking actions does not include the costs of "on-condition" actions (*e.g.,* "repair or replace, if necessary") or replacement parts that are necessary when doing those on-condition actions. Regardless of AD direction, those actions would be required to correct an unsafe condition identified on an airplane and ensure operation of that airplane in an airworthy condition. Therefore, we have made no change to the supplemental NPRM in this regard.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

Certain changes described above expand the scope of the earlier NPRM. As a result, we have determined that it is necessary to reopen the comment period to provide additional opportunity for the public to comment on this proposed AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Explanation of Change to Costs of Compliance

Since issuance of the original NPRM, we have increased the labor rate used in the Costs of Compliance from $80 per work hour to $85 per work hour. The Costs of Compliance information, below, reflects this increase in the specified hourly labor rate.

Costs of Compliance

Based on the service information, we estimate that this proposed AD affects about 41 products of U.S. registry. We also estimate that it takes about 65 work-hours per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $226,525, or $5,525 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

AIRBUS: Docket No. FAA–2009–0003; Directorate Identifier 2007–NM–251–AD.

Comments Due Date

(a) We must receive comments by April 23, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes, A340–211, –212, –213, –311, –312, –313, series airplanes, and A340–541 and –642 airplanes, certificated in any category; all certified models, all manufacturer serial numbers.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight Controls.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Several cases of corrosion and damage on the Down Drive Shafts (DDS), between the Down Drive Gear Box (DDGB) and the Input Gear Box (IPGB), on all 10 Flap Tracks (5 per wing), have been reported by AIRBUS Long Range Operators.

Investigations have revealed that corrosion and wear due to absence of grease in the spline interfaces could cause [DDS] disconnection which could result in a free movable flap surface, potentially leading to aircraft asymmetry or even flap detachment.

Emergency Airworthiness Directive (EAD) 2007–0222–E mandated on all aircraft older than 6 years since AIRBUS original delivery date of the aircraft, an initial inspection of all DDS and IPGB for corrosion and wear detection in order to replace any damaged part.

Revision 1 of EAD 2007–0222–E aimed for clarifying the compliance instructions.

[EASA AD 2008–0026] supersedes the EAD 2007–0222R1–E and mandates repetitive inspections every 6 years for all the fleet.

The unsafe condition could reduce the ability of the flightcrew to maintain the safe flight and landing of the airplane. The corrective actions include replacing damaged parts.

Compliance

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

Actions

(g) Do the applicable inspections and corrective actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the instructions of the applicable service information specified in Table 1 of this AD.

TABLE 1—SERVICE INFORMATION

For model—	Use airbus mandatory service bulletin—	For actions specified in paragraph—
A330–200 and –300 series airplanes	A330–27–3151, Revision 01, dated March 19, 2008.	(g)(1)(i) and (g)(1)(ii) of this AD.
A330–200 and –300 series airplanes	A330–27–3152, Revision 02, dated September 23, 2008.	(g)(1)(iv) and (g)(2) of this AD.
A340–200 and –300 series airplanes	A340-27-4151, Revision 01, dated March 19, 2008.	(g)(1)(i) and (g)(1)(ii) of this AD.
A340–200 and –300 series airplanes	A340–27–4152, Revision 02, dated September 23, 2008.	(g)(1)(iv) and (g)(2) of this AD.
A340–541 and –642 series airplanes	A340–27–5040, Revision 02, dated September 23, 2008.	(g)(2) of this AD.

(1) For Model A330–200 and –300 series airplanes, up to and including manufacturer serial number (MSN) 0420, and Model A340–200 and –300 series airplanes, up to and including MSN 0415, except MSNs 0385 and 0395: Do the applicable actions specified in paragraphs (g)(1)(i), (g)(1)(ii), (g)(1)(iii), and (g)(1)(iv) of this AD at the applicable time specified.

(i) For airplanes on which less than 10 years have accumulated since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of the effective date of this AD: Within 24 months after the effective date of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. For Type 3 damaged parts, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, do all applicable corrective actions within 18 months after doing the inspection.

(ii) For airplanes on which 10 or more years have accumulated since the date of issuance of the original French standard airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness as of the effective date of this AD: Within 4 months after the effective date of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 2 and 4 on both wings for corrosion and wear detection. For any Type 3 damaged parts on flap tracks 2 and 4, do all applicable corrective actions before further flight. For any Type 2 damaged IPGB parts on flap tracks 2 and 4, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii) of this AD.

(A) For wings on which Type 3 damage is found on the DDS of flap track 2 or 4, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap track 3 on both wings for corrosion and wear detection. For Type 3 damaged parts on flap track 3, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, on flap track 3, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A) of this AD.

(*1*) For wings on which Type 3 damage is found on the DDS of flap track 3, before further flight, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 1 and 5 on both wings for corrosion and wear detection. For Type 3 damaged parts on flap tracks 1 and 5, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts on flap tracks 1 and 5, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A)(*1*) of this AD.

(*2*) For wings on which no Type 3 damage is found on the DDS of flap track 3, within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A) of this AD,

perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 1 and 5 on both wings for corrosion and wear detection. For any Type 3 damaged parts on flap tracks 1 and 5, do all applicable corrective actions before further flight. For any Type 2 damaged IPGB parts on flap tracks 1 and 5, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii)(A)(*2*) of this AD.

(B) For wings on which no Type 3 damage is found on the DDS of flap track 2 and 4: Within 18 months after doing the inspection required by paragraph (g)(1)(ii) of this AD, perform simultaneous detailed visual inspections of the IPGB and of the DDS on flap tracks 1, 3, and 5 on both wings for corrosion and wear detection. For any Type 3 damaged parts on flap tracks 1, 3, and 5, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts on flap tracks 1, 3, and 5, do all applicable corrective actions within 18 months after doing the inspection required by paragraph (g)(1)(ii) of this AD.

(iii) Within 30 days after performing an initial inspection required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD, or within 30 days after the effective date of this AD, whichever occurs later, report the initial inspection results only, whatever they are, to Airbus as specified in the reporting sheet of the applicable service information listed in Table 1 of this AD.

(iv) Within 6 years after performing the applicable inspection required by paragraph (g)(1)(i) or (g)(1)(ii) of this AD, and thereafter at intervals not exceeding 6 years: Perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. For Type 3 damaged parts, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, do all applicable corrective actions within 18 months after doing the inspection.

(2) For airplanes other than those identified in paragraph (g)(1) of this AD: Within 6 years after issuance of the original French standard airworthiness certificate or the date of issuance of the original French or EASA export certificate of airworthiness, or within 20 months after the effective date of this AD, whichever occurs later; and thereafter at intervals not exceeding 6 years; perform simultaneous detailed visual inspections of the IPGB and of the DDS on all flap tracks on both wings for corrosion and wear detection and do all applicable corrective actions. For Type 3 damaged parts, do all applicable corrective actions before further flight. For Type 2 damaged IPGB parts, do all applicable corrective actions within 18 months after doing the inspection.

(3) Actions done before the effective date of this AD in accordance with the applicable service information specified in Table 2 of this AD are acceptable for compliance with the corresponding requirements of this AD.

TABLE 2—CREDIT SERVICE INFORMATION

Airbus mandatory service bulletin—	Revision—	Dated—
A330–27–3151	Original	August 9, 2007.
A330–27–3152	Original	August 9, 2007.
A330–27–3152	01	March 19, 2008.
A340–27–4151	Original	August 9, 2007.
A340–27–4152	Original	August 9, 2007.
A340–27–4152	01	March 19, 2008.
A340–27–5040	Original	August 9, 2007.
A340–27–5040	01	March 19, 2008.

Note 1: Airbus should be contacted in order to get appropriate information for airplanes on which the original delivery date of the airplane is unknown to the operator.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(h) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. 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.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(i) Refer to MCAI EASA Airworthiness Directive 2008–0026, dated February 12, 2008, and the service information specified in Table 1 of this AD, for related information.

Issued in Renton, Washington, on March 19, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6849 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–0277; Directorate Identifier 2009–NM–217–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Model 767 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Model 767 airplanes. This proposed AD would require repetitive inspections to detect fatigue cracking in the upper wing skin at the fastener holes common to the inboard and outboard front spar pitch load fittings, and corrective actions if necessary. This proposed AD results from reports of cracking in the upper wing skin at the fastener holes common to the inboard and outboard front spar pitch load fittings. We are proposing this AD to detect and correct fatigue cracking in the upper wing skin at the fastener holes common to the

inboard and outboard front spar pitch load fittings, which could result in the loss of the strut-to-wing upper link load path and possible separation of a strut and engine from the airplane during flight.

DATES: We must receive comments on this proposed AD by May 13, 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 proposed 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.* You may review copies of the referenced 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.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA–2010–0277; Directorate Identifier 2009–NM–217–AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Multiple operators have reported a total of 36 cracks in the upper wing skin at the fastener holes common to the inboard and outboard front spar pitch load fittings. The airplanes had accumulated between 11,700 and 39,900 total flight cycles, and between 28,700 and 83,100 total flight hours. The reported crack lengths were between 0.016 and 0.140 inch. All cracks were found during accomplishment of the open hole high frequency eddy current (HFEC) inspections given in Boeing service bulletins related to strut improvement—Boeing Service Bulletin 767–54–0080, dated October 7, 1999; Boeing Service Bulletin 767–54–0080, Revision 1, dated May 9, 2002; Boeing Service Bulletin 767–54–0081, dated July 29, 1999; Boeing Service Bulletin 767–54–0081, Revision 1, dated February 7, 2002; and Boeing Service Bulletin 767–54–0082, dated October 28, 1999. Further Boeing analysis has determined the cracks to be a result of fatigue due to higher than predicted fastener load and skin stress peaking along the aft fastener row. This cracking, if not detected and corrected, could result in the loss of the strut-to-wing upper link load path and possible separation of a strut and engine from the airplane during flight.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009. This service bulletin describes procedures for repetitively inspecting the upper wing skin at the fastener holes common to the inboard and outboard front spar pitch load fittings for cracks and corrective actions. This service bulletin specifies to use detailed and ultrasonic inspection techniques to inspect the upper wing skin surface. For airplanes on which any cracking is found, the service bulletin also specifies the following corrective actions, as applicable: Removing cracks, installing and replacing new fasteners, repairing freeze plugs, and contacting Boeing for repair instructions and doing the repair.

The compliance time for the initial upper wing skin surface detailed and ultrasonic inspections, or for the open hole HFEC inspection, depends upon the configuration of the airplane as defined in Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, and whether the airplane has been modified according to certain service bulletins. That service bulletin specifies the compliance time for the initial upper wing skin surface detailed and ultrasonic inspections as follows:

- For Group 1, Configuration 1 airplanes: Before 18,000 total flight cycles or 54,000 total flight hours (whichever occurs first).
- For Group 1, Configuration 2 airplanes: Within 11,000 flight cycles or 33,000 flight hours after completing the actions specified in Service Bulletin 767–54–0080 (whichever occurs first).
- For Group 2, Configuration 1 airplanes: Before 12,000 total flight cycles or 36,000 total flight hours (whichever occurs first).
- For Group 2, Configuration 2 airplanes: Before 12,000 flight cycles or 36,000 flight hours after completing the actions specified in Boeing Service Bulletin 767–54–0080 (whichever occurs first).
- For Group 3 airplanes: Before 12,000 total flight cycles or 36,000 total flight hours (whichever occurs first).
- For Group 4, Configuration 1 airplanes: Before 25,000 total flight cycles or 75,000 total flight hours (whichever occurs first).
- For Group 4, Configuration 2 airplanes: Within 17,000 flight cycles or 51,000 flight hours after completing the actions specified in Boeing Service Bulletin 767–54–0081 (whichever occurs first).
- For Group 5, Configuration 1 airplanes: Before 18,000 total flight cycles or 54,000 total flight hours (whichever occurs first).
- For Group 5, Configuration 2 airplanes: Within 15,000 flight cycles or 45,000 flight hours after completing the actions specified in Boeing Service Bulletin 767–54–0081 (whichever occurs first).
- For Group 6 airplanes: Before 18,000 total flight cycles or 54,000 total flight hours (whichever occurs first).

• For Group 7 airplanes: Before 18,000 total flight cycles or 54,000 total flight hours (whichever occurs first).

• For Group 8, Configuration 1 airplanes: Before 12,000 total flight cycles or 36,000 total flight hours (whichever occurs first).

• For Group 8, Configuration 2 airplanes: Within 9,000 flight cycles or 27,000 flight hours after completing the actions specified in Boeing Service Bulletin 767–54–0082 (whichever occurs first).

• For Group 9 airplanes: Before 12,000 total flight cycles or 36,000 total flight hours (whichever occurs first).

• For all airplanes: The service bulletin specifies a grace period of within 4,000 flight cycles or 12,000 flight hours after the date on the service bulletin, (whichever occurs first).

The service bulletin specifies repetitive intervals that range from 4,000 flight cycles or 12,000 flight hours (whichever occurs first), to 17,000 flight cycles or 51,000 flight hours (whichever occurs first), depending upon the configuration. The compliance time for all corrective actions is before further flight.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under "Differences Between the Proposed AD and Service Bulletin."

Differences Between the Proposed AD and Service Bulletin

Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

• Using a method that we approve; or

• Using data that meet the certification basis of the airplane, and that have been approved by the Boeing Commercial Airplanes Organization Designation Authorization that we have authorized to make those findings.

Interim Action

We consider this proposed AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this proposed AD would affect 363 airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per product to comply with this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $61,710, or $170 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866,

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

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

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

The Boeing Company: Docket No. FAA–2010–0277; Directorate Identifier 2009–NM–217–AD.

Comments Due Date

(a) We must receive comments by May 13, 2010.

Affected ADs

(b) None.

Applicability

(c) This AD applies to The Boeing Company Model 767–200, –300, –300F, and –400ER series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Unsafe Condition

(e) This AD results from reports of fatigue cracking in the upper wing skin at the fastener holes common to the inboard and outboard front spar pitch load fittings. The Federal Aviation Administration is issuing this AD to detect and correct fatigue cracking in the upper wing skin at the fastener holes common to the inboard and outboard front spar pitch load fittings, which could result in the loss of the strut-to-wing upper link load path and possible separation of a strut and engine from the airplane during flight.

Compliance

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

Initial Inspection

(g) Except as provided by paragraph (j) of this AD, at the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009: Do upper wing skin surface detailed and ultrasonic inspections, or do an open-hole high-frequency eddy current inspection, to detect cracking in the upper wing skin at the fastener holes common to the inboard

and outboard front spar pitch load fittings, and do all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, except as required by paragraph (i) of this AD. Do all applicable corrective actions before further flight.

Repetitive Inspections

(h) At the applicable time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, repeat the applicable inspection required by paragraph (g) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009.

Exceptions to the Service Bulletin

(i) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(j) Where Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, specifies a compliance time after the date on Boeing Alert Service Bulletin 767–57A0117, dated October 1, 2009, this AD requires compliance within the specified compliance time after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6577; 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on March 19, 2010.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–6851 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–1152; Airspace Docket No. 09–ASW–31]

Proposed Amendment of Class E Airspace; Austin, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace in the Austin, TX area. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Austin Executive Airport, Austin, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations at the airport.

DATES: Comments must be received on or before May 13, 2010.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–1152/Airspace Docket No. 09–ASW–31, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. FAA–2009–1152/Airspace Docket No. 09–ASW–31." The postcard will be date/time stamped and returned to the commenter.

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 **ADDRESSES** section for 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 office of the Central Service Center, 2601 Meacham Blvd., Fort Worth, TX 76137.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking 202–267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding additional Class E airspace extending upward from 700 feet above the surface in the Austin, TX airspace area, establishing controlled airspace for SIAPs at Austin Executive Airport, Austin, TX. The addition of the RNAV (GPS) RWY 13 and RNAV (GPS) RWY 31 SIAPs at Austin Executive Airport has created the need to extend Class E airspace to the northwest,

northeast and southeast of the current airspace. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9T, dated 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 would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart 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 add additional controlled airspace in the Austin, TX area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA 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.

* * * * *

ASW TX E5 Austin, TX [Amended]

Point of Origin
(Lat. 30°17′55″ N., long. 97°42′06″ W.)
Austin, Lakeway Airpark, TX
(Lat. 30°21′27″ N., long. 97°59′40″ W.)
Austin, Austin Executive Airport, TX
(Lat. 30°23′51″ N., long. 97°33′59″ W.)
Lago Vista, Lago Vista-Rusty Allen Airport, TX
(Lat. 30°29′55″ N., long. 97°58′10″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of the Point of Origin, and within a 6.4-mile radius of Lakeway Airpark, and within a 6.4-mile radius of Lago Vista-Rusty Allen Airport, and within a 6.5-mile radius of Austin Executive Airport, and within 2 miles each side of the 132° bearing from Austin Executive Airport extending from the 6.5-mile radius to 10.4 miles southeast of the airport, and within 2 miles each side of the 311° bearing from Austin Executive Airport extending from the 6.5-mile radius to 11.2 miles southeast of the airport.

Issued in Fort Worth, TX, on March 16, 2010.

Anthony D. Roetzel,

Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2010–6811 Filed 3–26–10; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2010–0248; Airspace Docket No. 10–ANE–10]

Removal of Class E Airspace, Brunswick, ME; and Establishment of Class E Airspace, Wiscasset, ME

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to remove Class E airspace at Brunswick, ME, as the airport has closed and the associated Standard Instrument Approach Procedures (SIAPs) removed, and to establish Class E airspace at Wiscasset, ME, to accommodate the SIAPs developed for the airport. This action enhances the safety and airspace management of Instrument Flight Rules (IFR) operations at Wiscasset Airport, Wiscasset, ME.

DATES: Comments must be received on or before May 13, 2010.

ADDRESSES: Send comments on this rule to: U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey, SE., Washington, DC 20590–0001; Telephone: 1–800–647–5527; Fax: 202–493–2251. You must identify the Docket Number FAA–2010–0248; Airspace Docket No. 10–ANE–10, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Melinda Giddens, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5610.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on this rule 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–2010–0248; Airspace Docket No. 10–ANE–10) 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*.

Comments 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 Docket No. FAA–2010–0248; Airspace

Docket No. 10–ANE–10." The postcard will be date/time stamped and returned to the commenter.

All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. 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 from and comments submitted through *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 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 office of the Eastern Service Center, Federal Aviation Administration, room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory circular No. 11–2A, Notice of Proposed Rulemaking distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 to remove Class E airspace at Brunswick, ME to eliminate controlled airspace not required as the airport has closed, and to establish Class E airspace at Wiscasset, ME, to provide controlled airspace required to support the SIAPs for Wiscasset Airport. The Class E airspace extending upward from 700 feet above the surface would be established for the safety and management of IFR operations.

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 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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 United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This proposed 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 proposed regulation is within the scope of that authority as it would remove Class E airspace at Brunswick NAS Airport, Brunswick, ME, and establish Class E airspace at Wiscasset Airport, Wiscasset, ME.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9T, Airspace Designations and Reporting Points, signed August 27, 2009, 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.

* * * * *

ANE ME E5 Brunswick, ME [REMOVED]

* * * * *

ANE ME E5 Wiscasset, ME [NEW]

Wiscasset Airport, ME
(Lat. 43°57′40″ N., long. 69°42′45″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Wiscasset Airport and within 2 miles each side of the 232° bearing from the airport, extending from the 6.3-mile radius to 10.2 miles southwest of the airport and within 2 miles each side of the 052° bearing from the airport, extending from the 6.3-mile radius to 9.8 miles to the northeast of the airport.

Issued in College Park, Georgia, on March 16, 2010.

Michael Vermuth,

Acting Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2010–6810 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM10–17–000]

Demand Response Compensation in Organized Wholesale Energy Markets

March 18, 2010.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is issuing a Notice of Proposed Rulemaking (NOPR) proposing an approach for compensating demand response resources in order to improve the competitiveness of organized wholesale energy markets and thus ensure just and reasonable wholesale rates. The Commission invites all interested persons to submit comments in response to the regulatory text proposed herein.

DATES: Comments are due May 13, 2010.

ADDRESSES: You may submit comments, identified by docket number by any of the following methods:

• *Agency Web Site: http://ferc.gov.* Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format.

• *Mail/Hand Delivery:* Commenters unable to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, *see* the Comment Procedures Section of this document.

FOR FURTHER INFORMATION CONTACT:

Arnie Quinn, Federal Energy Regulatory Commission, Office of Energy Policy & Innovation, 888 First Street, NE., Washington, DC 20426. (202) 502–8693. *arnie.quinn@ferc.gov.*

Helen Dyson, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, NE., Washington, DC 20426. (202) 502–8856. *helen.dyson@ferc.gov.*

SUPPLEMENTARY INFORMATION:

130 FERC ¶ 61,213, PJM Interconnection, LLC, Docket No. EL09–68–000

Notice of Proposed Rulemaking

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1. The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations to establish the approach described below as compensation for demand response [1] resources [2] participating in organized energy markets. We propose that Independent System Operators (ISOs) and Regional Transmission Organizations (RTOs) [3] with tariff provisions permitting demand response providers to participate as resources in energy markets by reducing consumption of electricity from their expected levels in response to price signals be required to pay to demand response providers, in all hours, the market price for energy for such reductions.[4]

I. Background

A. Role of Demand Response in Organized Wholesale Energy Markets

2. The Commission has acted over the last several decades to implement Congressional policy to expand the wholesale energy markets to facilitate entry of new resources and support competitive markets. Most recently, the Commission in Order No. 719 implemented a series of reforms aimed at improving the competitiveness of the organized energy markets, finding that effective wholesale competition protects consumers by, among other things, providing more supply options, encouraging new entry and innovation, and spurring deployment of new technologies.[5] Improving the competitiveness of organized wholesale markets, the Commission concluded, is therefore "integral to the Commission fulfilling its statutory mandate to ensure supplies of electric energy at just, reasonable, and not unduly discriminatory or preferential rates." [6]

3. As the Commission recognized in Order No. 719, active participation by customers in organized wholesale energy markets through demand reductions helps to increase competition in those markets.[7] Demand reductions whereby customers reduce electricity consumption from normal usage levels in response to price signals can generally occur in two ways: (1) Customers reduce demand by responding to dynamic rates that are based on wholesale prices (sometimes called "price-responsive demand"); and (2) customers can provide demand response that acts as a resource in wholesale markets to balance supply and demand. While a number of States and utilities are pursuing retail-level price-responsive demand initiatives based on dynamic and time-differentiated retail prices and utility investments, these are State initiatives, and, thus, are not the subject of this proceeding.[8] Our focus here is on customers providing—through bids—demand response that acts as a resource in organized wholesale energy markets.

4. Demand response acting as a resource in organized wholesale energy markets helps to improve the functioning and competitiveness of such markets in several ways. First, demand response can lower prices. When bid directly into the wholesale market, demand response—which results in

[1] Demand response means a reduction in the consumption of electric energy by customers from their expected consumption in response to an increase in the price of electric energy or to incentive payments designed to induce lower consumption of electric energy. 18 CFR 35.28(b)(4).

[2] Demand response resource means a resource capable of providing demand response. 18 CFR 35.28(b)(5).

[3] The following RTOs and ISOs have organized wholesale electricity markets: PJM Interconnection, LLC (PJM); New York Independent System Operator, Inc. (NYISO); Midwest Independent Transmission System Operator, Inc. (Midwest ISO); ISO New England, Inc. (ISO–NE); California Independent System Operator Corp. (CAISO); and Southwest Power Pool, Inc. (SPP).

[4] This provision applies only to demand response acting as a resource in organized wholesale energy markets. The provision will not apply to demand response under programs that ISOs and RTOs administer for reliability or emergency conditions, such as, for instance, Midwest ISO's Emergency Demand Response; NYISO's Emergency Demand Response Program; PJM's Emergency Load Response; and ISO–NE's Real-Time 30-Minute Demand Response Program, Real-Time and 2-Hour Demand Response Program, and Real-Time Profiled Response Program. This provision also will not apply to compensation in ancillary services markets, which the Commission has addressed elsewhere. *See e.g., Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719, 73 FR 64,100 (Oct. 28, 2008), FERC Stats. & Regs. P 31,281 (2008) (Order No. 719 or Final Rule).

[5] *See* Order No. 719 at P 1; *see also Regional Transmission Organizations,* Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at P 1 (1999), *order on reh'g,* Order No. 2000–A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington* v. *FERC,* 272 F.3d 607, 348 U.S. App. D.C. 205 (DC Cir. 2001).

[6] Order No. 719 at P 1.

[7] *See* Order No. 719 at P 48.

[8] Some ISOs and RTOs are engaged in stakeholder discussions concerning the coordination necessary between wholesale markets and retail rate design, and we expect to address any filings emerging from those discussions in future proceedings.

lower demand—can result in lower clearing prices.[9] For example, a study conducted by PJM, which simulated the effect of demand response on prices, demonstrated that a modest three percent load reduction in the 100 highest peak hours corresponds to a price decline of six to 12 percent.[10] Demand response can also lower prices in the organized wholesale energy markets by reducing the need to dispatch higher-priced generation, or construct new generation, in an effort to satisfy load.[11] Second, demand response can mitigate generator market power.[12] This is because the more demand response is able to reduce demand, the more downward pressure it places on generator bidding strategies by increasing the risk to a supplier that it will not be dispatched if it bids a price that is too high.[13] Third, demand response has the potential to support system reliability and address resource adequacy[14] and resource management challenges surrounding the unexpected loss of generation.[15]

5. Given its ability to lower electricity prices and ensure reliability, demand response can play a critical role in helping the Commission fulfill its mandate under the Federal Power Act (FPA) to ensure that rates charged for energy are just and reasonable.[16] Accordingly, and consistent with national policy requiring facilitation of demand response,[17] the Commission has acted to remove barriers to participation of demand response resources in organized wholesale electricity markets. For example, in Order No. 890, the Commission modified the *pro forma* Open Access Transmission Tariff to allow non-generation resources, including demand response resources, to be used in the provision of certain ancillary services where appropriate on a comparable basis to service provided by generation resources.[18] Order No. 890–A further requires transmission providers to develop transmission planning processes that treat all resources, including demand response, on a comparable basis.[19]

6. The Commission built on these reforms in Order No. 719, requiring ISOs and RTOs to, among other things, accept bids from demand response resources in their markets for certain ancillary services on a basis comparable to other resources.[20] The Commission also required each ISO and RTO "to reform or demonstrate the adequacy of its existing market rules to ensure that the market price for energy reflects the value of energy during an operating reserve shortage," [21] for purposes of encouraging existing generation and demand resources to continue to be relied upon during an operating reserve shortage, and encouraging entry of new generation and demand resources.[22]

B. Current ISO and RTO Demand Response Programs

7. In addition to the foregoing efforts, the Commission has issued orders in recent years approving various types of ISO and RTO demand response programs. As noted above, some of these programs are administered for reliability and emergency conditions. Apart from these programs, wholesale customers and qualifying large retail customers may bid demand response directly into the day-ahead and real-time energy markets, certain ancillary service markets and capacity markets.[23] Demand response providers participating as resources in the day-ahead and real-time energy markets are the subject of this proceeding.

8. With particular regard to demand response compensation for this latter category of resources, the Commission previously has allowed a system-by-system approach, whereby each RTO and ISO has developed its own compensation methodologies for demand response resources in its energy market. As a result, the levels of compensation for demand response vary significantly among RTOs and ISOs. PJM pays the Locational Marginal Price (LMP) [24] minus the generation and transmission portions of the retail rate.[25] ISO–NE and NYISO currently pay LMP

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[9] *Wholesale Competition in Regions with Organized Electric Markets,* Order No. 719–A, FERC Stats. & Regs. ¶ 31,292 (2009).

[10] ISO–RTO Council Report, Harnessing the Power of Demand: How ISOs and RTOs Are Integrating Demand Response into Wholesale Electricity Markets, found at *http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_DR_Report_101607.pdf.*

[11] *Id.* ("Demand response tends to flatten an area's load profile, which in turn may reduce the need to construct and use more costly resources during periods of high demand; the overall effect is to lower the average cost of producing energy."). Similarly, NYISO "has experienced a significant increase in the registration of the [demand response] programs that have effectively reduced the need for additional [generation] capacity resources to the system based on customer pledges to cut energy usage on demand." *See* NYISO's 2009 Comprehensive Reliability Plan at 3, found at *http://www.nyiso.com/public/webdocs/newsroom/planning_reports/CRP__FINAL_5-19-09.pdf.*

[12] *See* Comments of NYISO's Market Monitor filed in Docket No. ER09–1142–000, May 15, 2009 (Demand response "contributes to reliability in the short-term, resource adequacy in the long-term, reduces price volatility and other market costs, and mitigates supplier market power.").

[13] *Id.*

[14] *See* ISO–RTO Council Report, Harnessing the Power of Demand: How ISOs and RTOs Are Integrating Demand Response into Wholesale Electricity Markets at 4, found at *http://www.isorto.org/atf/cf/%7B5B4E85C6-7EAC-40A0-8DC3-003829518EBD%7D/IRC_DR_Report_101607.pdf* ("Demand response contributes to maintaining system reliability. Lower electric load when supply is especially tight reduces the likelihood of load shedding. Improvements in reliability mean that many circumstances that otherwise result in forced outages and rolling blackouts are averted, resulting in substantial financial savings. * * *"); *Smart Grid Policy,* 126 FERC ¶ 61,253, at P 19 and n.23 (2009) ("The Smart Grid concept envisions a power system architecture that permits two-way communication between the grid and essentially all devices that connect to it, ultimately all the way down to large consumer appliances. * * * Once that is achieved, a significant proportion of electric load could become an important resource to the electric system, able to respond automatically to customer-selected price or dispatch signals delivered over the Smart Grid infrastructure without significant degradation of service quality.").

[15] For instance, in ERCOT, on February 26, 2008, through a combination of a sudden drop in power supplied by wind generators, a quicker-than-expected ramping up of demand, and the loss of thermal generation, ERCOT found itself short of reserves. The system operator called on all demand response resources, and 1200 MW of Load acting as Resource (LaaRs) responded within ten minutes, bringing ERCOT back into balance, from 59.85 Hz back to 60 Hz.

[16] 16 U.S.C. 824d (2006).

[17] *See EPAct 2005,* Public Law 109–58, § 1252(f), 119 Stat. 594, 965 (2005) ("It is the policy of the United States that * * * unnecessary barriers to demand response participation in energy, capacity, and ancillary service markets shall be eliminated.").

[18] *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 887–88 (2007), *order on reh'g,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g and clarification,* Order No. 890–B, 73 FR 39092 (Jul. 8, 2008), 123 FERC ¶ 61,299 (2008), *order on reh'g,* Order No. 890–C, 126 FERC ¶ 61,228 (2009), *order on clarification,* Order No. 890–D, 129 FERC ¶ 61,126 (2009).

[19] Order No. 890–A at P 216.

[20] Order No. 719 at P 47–49.

[21] *Id.* P 194.

[22] *Id.* P 247.

[23] Other demand response programs allow demand response to be used as a capacity resource and as a resource during system emergencies or permit the use of demand response for synchronized reserves and regulation service. *See, e.g., PJM Interconnection, LLC,* 117 FERC ¶ 61,331 (2006); *Devon Power LLC,* 115 FERC ¶ 61,340, *order on reh'g,* 117 FERC ¶ 61,133 (2006), *appeal pending sub nom., Maine Pub. Utils. Comm'n* v. *FERC,* No. 06–1403 (DC Cir. 2007); *New York Indep. Sys. Operator., Inc.,* 95 FERC ¶ 61,136 (2001); *NSTAR Services Co.* v. *New England Power Pool,* 95 FERC ¶ 61,250 (2001); *New England Power Pool and ISO New England, Inc.,* 100 FERC ¶ 61,287, *order on reh'g,* 101 FERC ¶ 61,344 (2002), *order on reh'g,* 103 FERC ¶ 61,304, *order on reh'g,* 105 FERC ¶ 61,211 (2003); *PJM Interconnection, LLC,* 99 FERC ¶ 61,227 (2002).

[24] LMP refers to the price calculated by the ISO or RTO at particular locations or electrical nodes within the ISO or RTO footprint and is used as the market price to compensate generators. There are variations in the way ISOs and RTOs calculate LMP; however, each method establishes the marginal value of resources in that market. Nothing in this NOPR is intended to change ISO and RTO methods for calculating LMP.

[25] PJM FERC Electric Tariff, Sixth Revised Sheet No. 388D.01.

when prices are above a threshold level, with the levels differing between the RTOs.[26] The Midwest ISO currently has a program that pays LMP for demand response in the real-time energy market when the demand response provider has purchased the amount reduced in the day-ahead market for energy and ancillary services.[27] CAISO pays LMP in its participating load program that allows qualifying resources to provide day-ahead and real-time energy and non-spinning reserves.[28] SPP currently has no demand response program at all.[29] ISOs and RTOs have continued to examine the effectiveness of demand response compensation in their respective regions, and, as a result, the issue of proper compensation continues to be the subject of several proceedings.[30]

C. The Need for Reform

9. Despite the benefits of demand response and various efforts by the Commission, ISOs and RTOs to address barriers to and compensation for demand response participation, demand response providers collectively play a small role in wholesale markets. After several years of observing demand response participation in ISO and RTO markets with different, and often evolving, demand response compensation structures, the Commission is concerned that some existing, inadequate compensation structures have hindered the development and use of demand response. The impediment has been addressed at Commission-sponsored technical conferences concerning demand response, where participants have confirmed that customers "must have confidence that appropriate price signals will be sustained by stable competitive pricing structures, before they will make an investment in demand response."[31] Some participants have advised that demand response quite simply will not occur without adequate compensation.[32]

10. Indeed, there are indications that demand response resources react correspondingly to increases or decreases in payment. PJM provides a case study on this point. It first implemented its Economic Load Response Program (Economic Program) providing for demand response compensation in June 2002.[33] Several years later, starting in January 2008, when PJM reduced its compensation for demand response, settled demand reductions began decreasing from previous years.[34] Specifically, PJM's Market Monitor noted that, from 2007 to 2008, following the decrease in compensation, settled demand reductions decreased by 36.8 percent, from 714,200 MWh to 458,300 MWh, and the decline has continued at least through March 2009.[35] Although the Commission had rejected a request to prevent the compensation decrease from occurring as per the terms of PJM's then-existing tariff, the Commission encouraged PJM and its stakeholders to continue analyzing the effectiveness of PJM's demand response program with the decreased payments for demand response.[36] Based upon our own review, the Commission is now concerned that evidence of demand reductions in PJM, and inadequate demand response participation, now and in the future, may be the result of compensation that is no longer just and reasonable, because, as detailed below, the existing and varying levels of compensation generally fail to reflect the marginal value of demand response resources to ISO and RTO energy markets.

II. Discussion

11. Given the importance of demand response resources to the competitiveness of organized wholesale electricity markets, and based upon our experience to date with demand response in the ISO- and RTO-administered markets, the Commission proposes to address compensation for demand response resources participating in organized wholesale energy markets generically in this proceeding. The Commission proposes to add section 35.18(g)(1)(v) to our regulations to establish a specific compensation approach for demand response resources participating in organized wholesale energy markets (such as the day-ahead and real-time markets administered by the ISOs and RTOs). Under the proposed section, each Commission-approved ISO and RTO that has a tariff provision providing for participation of demand response resources in its energy market must pay demand response resources, in all hours, the market price for energy, *i.e.,* full LMP, for demand reductions made in response to price signals.[37]

12. The Commission proposes to take this action generically to address issues that are common to the RTO and ISO markets in a coordinated manner in a single proceeding. As discussed further below, we believe paying demand response resources the LMP in all hours will compensate those resources in a manner that reflects the marginal value of the resource to each RTO and ISO, comparable to treatment of generation resources. This will improve the competitiveness of the organized wholesale energy markets and, in turn, help to ensure that energy prices in those markets are just and reasonable.

13. As explained above, we have previously accepted a variety of ISO and

[26] For example, under ISO–NE's Real Time Price Response Program, the minimum bid is $100/MWh and a demand response resource is paid the higher of LMP or $100/MWh. *See* Section III.1.3 of the ISO New England Transmission, Markets and Services Tariff, Section 1 of the Second Restated New England Power Pool Agreement. NYISO implements a day-ahead demand response program by which resources bid into the market at a minimum of $75/MWh and can get paid the LMP. *See* NYISO Incentivized Day-Ahead Economic Load Curtailment Program, Fifth Revised Tariff Sheet No. 34–34A, 89.

[27] *See* Charges and Credits for Real-Time Energy and Operating Reserve Market Energy Purchases and Sales Associated with Demand Response Resources. Midwest ISO FERC Electric Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 1114.

[28] *See* section 11.2.1.1 IFM Payments for Supply of Energy, CAISO FERC Electric Tariff.

[29] However, the Commission has directed SPP to report on ways it can incorporate demand response into its imbalance market. *Southwest Power Pool, Inc.,* 114 FERC ¶ 61,289, at P 229 (2006). In its orders addressing SPP's compliance with Order No. 719, the Commission also directed SPP to make a subsequent compliance filing addressing demand response participation in its organized markets. *Southwest Power Pool, Inc.,* 129 FERC ¶ 61,163, at P 51 (2009).

[30] *See PJM Interconnection, LLC,* Docket No. EL09–68–000; *ISO New England, Inc.,* Docket No. ER09–1051–000; *ISO New England, Inc.,* Docket No. ER08–830–000; *Midwest Indep. Transmission Sys. Operator, Inc.,* Docket No. ER09–1049–000.

[31] Transcript of Order No. 719 technical conference at 24, statement by James Eber, Director of Demand Response at Commonwealth Edison, found at *http://www.ferc.gov/EventCalendar/EventDetails.aspx?ID=3994&CalType=%20&CalendarID=116&Date=05/21/2008&View=Listview.*

[32] *See* Statements of Larry Stalica, Vice President, Linde Energy Services, Inc. FERC Technical Conference—Demand Response in Organized Electric Markets, May 21, 2008, found at *http://www.ferc.gov/EventCalendar/Files/20080521081612-Stalica,%20Linde%20Energy%20Services.pdf.* ("The mere avoidance of electricity prices often provides insufficient value to offset these real costs. Demand response will not occur if customers do not have an economic incentive to reduce consumption.").

[33] *See PJM Interconnection, LLC,* 99 FERC ¶ 61,227 (2002). PJM's Economic Program provided for payment of LMP for all demand response reductions when LMP equaled or exceeded $75/MWh and paid LMP minus the generation and transmission components of the retail rate when LMP was less than $75/MWh.

[34] The tariff provision providing for payment of LMP when LMP equaled or exceeded $75/MWh terminated by its terms on December 31, 2007, and, since then, PJM has paid only LMP minus the generation and transmission components of the retail rate.

[35] Monitoring Analytics, Barriers to Demand Side Response in PJM at 22 (July 1, 2009).

[36] *PJM Interconnection, LLC,* 121 FERC ¶ 61,315, at P 29 (2007).

[37] This provision will not apply to programs that ISOs and RTOs administer for reliability or emergency conditions. In those situations, the ISO and RTO tariffs may provide compensation that is not necessarily related solely to energy prices but is designed to prevent involuntary load curtailment.

RTO proposals for compensation for demand response providers, with different levels of payment. As we have gained experience with these programs, we are concerned that the current compensation levels appear to have become unjust and unreasonable. Providers may submit price and quantity bids into the organized wholesale energy markets and the market clears at the marginal resource yet they fail to compensate demand response at levels that reflect the marginal value of the resource being used by the RTO or ISO to balance supply and demand. The current wholesale compensation levels may therefore be leading to under-investment in demand response resources, resulting in higher, and unjust and unreasonable, prices in the organized electricity markets. To help ensure that wholesale prices in ISOs and RTOs remain just and reasonable, we are proposing to require each ISO and RTO to pay the LMP to demand response providers participating in the organized wholesale energy markets.

14. It is a well-established practice in the organized wholesale energy markets to rely on LMPs to encourage efficient behavior by market participants. The LMP represents the value of additional supply or reductions in consumption at each node within the RTO or ISO and, thus, reflects the marginal cost of the last unit necessary to efficiently balance supply and demand.[38] The LMP is therefore the primary mechanism for compensating generation resources clearing in the organized electricity markets, which the Commission has found encourages "more efficient supply and demand decisions in both the short run and long run."[39]

15. Given that the LMP represents the marginal value of the resource being used by the RTO or ISO to balance supply and demand, it follows that the LMP should be paid to any resource clearing in the RTO's or ISO's energy market. In balancing supply and demand, a one megawatt reduction in demand is equivalent to a one megawatt increase in energy for purposes of meeting load requirements and maintaining a reliable electric system. The ISO or RTO is able to avoid dispatching suppliers with higher bids, be they generation or demand response, by accepting a lower bid to either reduce consumption or increase generation. As Dr. Alfred E. Kahn noted in a recent PJM proceeding in Docket No. EL09–68–000, consumers offering to reduce consumption should be induced "to behave as they would if the market mechanisms alone were capable of rewarding them directly for efficient economizing."[40] This is because "the (incremental) costs saved by curtailments in demand clearly will be LMP—including the marginal costs of generation. So, in the end the LMP inducement is the economically correct one."[41] This appears to be true across all ISOs and RTOs and, therefore, it appears appropriate to compensate both generation and demand response resources participating in the organized wholesale electricity markets at the LMP.

16. Ultimately, the markets themselves will determine the level of generation and demand response resources needed to balance energy and demand. The level of compensation provided to each resource, however, affects its willingness and ability to participate in the market.[42] For example, demand response resources need to make investments in technologies to enable participation in the organized wholesale energy markets, as well as incur costs in changing their operations in order to provide demand response. In those markets paying less than the LMP to demand response resources, such resources have less revenues to support investment in demand response-enabling technology (such as metering equipment, energy usage monitors and process controls) necessary to enable more wholesale market participation by demand response resources. Where compensation for demand response is inadequate, demand response resources will be hesitant to invest in demand response devices. Compared to existing compensation levels, paying the LMP in all hours should allow more demand response resources to cover their investment costs and increase their ability to participate in the organized wholesale electric markets.

17. Increased levels of demand response participation, in turn, should lead to lower clearing prices in the organized wholesale energy markets. As the Commission explained in accepting PJM's Economic Load Response Program:

> Without a demand response mechanism, [an independent system operator] is forced to work under the assumption that all customers have an inelastic demand for energy and will pay any price for power. There is ample evidence that this is not true. Many customers, given the right tools, can and will manage their demand. * * * A working demand response program puts downward pressure on price, because suppliers have additional incentives to keep bids close to their marginal production costs and high supply bids are more likely to reduce the bidder's energy sales. Appropriate price signals to customers thus helps to mitigate market power as high supply bids are more likely to reduce the bidders' energy sales. Suppliers thus have additional incentive to keep bids close to their marginal production costs.[43]

18. Additionally, increasing the aggregate amount of demand response resources in the organized wholesale energy markets will help to move prices closer to the levels that would result if all demand could respond to the marginal cost of energy. Paying the LMP to those potential demand response resources who are capable of responding—but who have not been participating as a resource due to inadequate compensation—should bring those additional demand response resources into the organized wholesale energy markets. But again, the markets themselves will determine the appropriate level of demand response, and generation, resources needed by the ISO and RTO to balance energy and demand based on their relative bids into the markets.

19. We recognize that the appropriate level of compensation for demand response resources participating in organized wholesale energy markets has been the subject of debate. In various proceedings, some parties have advocated payment of LMP minus components of the retail rate, on the theory that such an approach permits all consumers to react as if they were paying LMP.[44] Some parties have argued that payment of LMP is appropriate only during the most expensive hours,[45] on the theory that

[38] *See ISO New England, Inc.,* 100 FERC ¶ 61,287, at P 71 (2002) (LMP "provide[s] appropriate price signals indicating the value of additional resources or conservation at each node in the transmission system"); *Cleco Power LLC, et al.,* 103 FERC ¶ 61,272, at P 67 (2003) ("It is widely observed that markets work efficiently when prices reflect marginal costs, *i.e.,* when the market price will be equal to the cost of bringing to market the last unit necessary to balance supply and demand.").

[39] *See New England Power Pool,* 101 FERC ¶ 61,344, at P 35 (2002).

[40] Kahn Affidavit at 4.

[41] *Id.* at 3.

[42] Generation and demand response resources have the potential to earn other revenues through bilateral arrangements, capacity markets where they exist, and ancillary services.

[43] *PJM Interconnection, LLC,* 99 FERC ¶ 61,227, at 61,939 (2002) (quoting *PJM Interconnection, LLC,* 99 FERC ¶ 61,139, at 61,573 (2002)).

[44] Professor William W. Hogan has argued, for instance, that payment of LMP (without an offset for some portion of the retail rate) over-compensates individual demand response providers and might result in more demand response than is efficient. *See* Attachment to Answer of Electric Power Supply Association, Providing Incentives for Efficient Demand Response, William W. Hogan, October 29, 2009, submitted in Docket No. EL09–68–000.

[45] *See* PJM's Transmittal Letter at 29 submitted in Docket No. EL09–68–000.

demand response will have the greatest impact during those hours in which the aggregate supply curve is steep (*i.e.,* when supply is less elastic). Given the current barriers to demand response [46] and the evolving nature of the technology enabling demand response, a perfect solution or payment scheme may not exist. We nonetheless believe that paying LMP in all hours to the demand response resources that can participate in the organized wholesale energy markets is the correct approach at this time, because that payment reflects the marginal effect of each demand response resource in the hour, just as the LMP reflects the marginal effect of generation resources in each hour. LMP is the marginal value of both demand response and generation in any hour, regardless of whether it is morning or evening, daytime or nighttime, weekday or weekend.[47]

20. We, nevertheless, seek comment on the need to compensate demand response acting as a resource in organized wholesale energy markets. Commenters may address whether current compensation for demand response providers acting as a resource in the organized wholesale energy markets is adequately procuring demand response. We further solicit comment on alternative approaches to compensating demand response resources participating in organized wholesale energy markets, and the merit of those approaches in comparison to the one proposed here. In particular, we ask for comment on whether a reduction in consumption is comparable to an increase in electricity production for purposes of balancing supply and demand, and whether, therefore, demand response providers and generators should receive comparable compensation. We further seek comment on whether paying LMP to demand response resources is comparable compensation or is more or less than comparable to compensation paid to generation in the ISO and RTO energy markets. We also request comment on whether payment of LMP should apply to all hours, and, if not, the criteria that should be used for establishing the hours when LMP should apply. Additionally, we seek comment on whether requiring payment of LMP is appropriate across all ISOs and RTOs, or whether variations among ISOs and RTOs justify varying levels of demand response resource compensation. To that end, we further seek comment on whether the Commission should allow regional variations for an ISO or RTO that does not seek to compensate demand response resources participating in the organized wholesale energy market.

21. Organized wholesale energy markets are evolving and, as such, the rules and regulations related to those markets will continue to evolve. This is no less so for demand response, as the markets, and the types of demand response participating in them, continue to evolve. Therefore, it may be necessary in the future for industry and the Commission to reassess the appropriate method for compensating demand response resources in organized wholesale energy markets.[48] Accordingly, we also seek comment on whether, and under what circumstances, the Commission should conduct periodic reviews of demand response compensation and the criteria that should be used in making such assessments.

22. With specific regard to the proposed regulatory text set forth below, we seek comments on whether terms such as "expected levels," "price signals," and "market prices" are sufficiently defined.

23. Because we are addressing generically in this rulemaking proceeding the same issues raised in the *PJM* proceeding in Docket No. EL09–68–000, that docket is hereby terminated.[49] The Commission will take administrative notice of the record in the *PJM* proceeding so that parties in that proceeding need not refile affidavits or other evidence introduced there.

III. Information Collection Statement

24. The Office of Management and Budget (OMB) requires that OMB approve certain information collection and data retention requirements imposed by agency rules.[50] Therefore, the Commission is submitting the proposed modifications to its information collections to OMB for review and approval in accordance with section 3507(d) of the Paperwork Reduction Act of 1995.[51]

25. The Office of Management and Budget's (OMB) regulations require approval of certain information collection requirements imposed by agency rules. Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

26. The Commission is submitting these reporting requirements to OMB for its review and approval under section 3507(d) of the Paperwork Reduction Act. Comments are solicited on the Commission's need for this information, whether the information will have practical utility, the accuracy of provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing the respondent's burden, including the use of automated information techniques.

Burden Estimate: The Public Reporting burden for the requirements contained in the NOPR is as follows:

[46] A recent Commission Staff report details several barriers to demand response, including regulatory barriers, such as lack of a direct connection between wholesale and retail prices, lack of dynamic prices, measurement and verification challenges, lack of real-time information sharing, and ineffective demand response program design; technological barriers, such as lack of advanced metering infrastructure and the high cost of some enabling technologies; and other barriers, such as lack of customer awareness and education. Federal Energy Regulatory Commission Staff, A National Assessment of Demand Response Potential (June 2009), found at *http://www.ferc.gov/legal/staff-refports/06-09-demand-response.pdf.* In compliance filings submitted by RTOs and ISOs and their market monitors pursuant to Order No. 719, as well as in responsive pleadings, parties have mentioned additional barriers, such as the inability of demand response resources to set LMP, minimum size requirements, and others.

[47] We note that in PJM, 17 percent of load reductions by demand response resources for that year occurred between the non-peak hours of 11 p.m. and 8 a.m. *See* 2008 State of the Market Report for PJM, Volume 2, Table 2–93 at 103, found at *http://www.monitoringanalytics.com/reports/PJM_State_of_the_Market/2008/2008-som-pjm-volume2.pdf.*

[48] Indeed, the Commission's proposed action in this proceeding is evidence of our continuing assessment of compensation for demand response resources. In *PJM Interconnection, LLC,* 121 FERC ¶ 61,315 (2007), the Commission rejected a complaint that PJM's existing compensation for demand response (LMP minus the generation and transmission components of the retail rate) was unjust and unreasonable, finding that there was insufficient evidence at the time to make such a finding. As we have acquired more experience with the participation of demand response resources in the organized wholesale energy markets, we are concerned that compensation for demand response in PJM and other RTO and ISO markets may no longer be just and reasonable.

[49] *See Michigan Pub. Power Agency* v. *Midwest Indep. Transmission Sys. Operator, Inc.,* 128 FERC ¶ 61,268, at P 29 n.47 (2009) (Commission has discretion to decide when and where it will resolve an issue).

[50] 5 CFR 1320.11(b) (2009).

[51] 44 U.S.C. 3507(d) (2006).

Data collection	Number of respondents	Number of responses	Hours per response	Total annual hours
FERC–516 Transmission Organizations with Organized Electricity Markets	6	1	6	36

Information Collection Costs: The Commission seeks comments on the costs to comply with these requirements. The Commission has projected the average annualized cost of all respondents to be the following: 36 hours @ $220 per hour = $7,920 for respondents. No capital costs are estimated to be incurred by respondents.

Title: FERC–516 "Electric Rate Schedule Tariff Filings".

Action: Proposed Collections.

OMB Control No: 1902–0096.

Respondents: Business or other for profit, and/or not for profit institutions.

Frequency of Responses: One time to initially comply with the rule, and then on occasion as needed to revise or modify.

27. *Necessity of the Information:* The information from FERC–516 enables the Commission to exercise its statutory obligation under Sections 205 and 206 of the FPA. FPA section 205 specifies that all rates and charges, and related contracts and service conditions for wholesale sales and transmission of energy in interstate commerce be filed with the Commission and must be "just and reasonable." In addition, FPA section 206 requires the Commission upon complaint or its own motion, to modify existing rates or services that are found to unjust, unreasonable, unduly discriminatory or preferential. The Commission needs sufficient detail to make an informed and reasonable decision concerning the appropriate level of rates, and the appropriateness of non-rate terms and conditions, and to aid customers and other parties who may wish to challenge the rates, terms, and conditions proposed by the utility.

28. This proposed rule, if adopted, would amend the Commission's regulations to obligate ISOs and RTOs to pay the market price for energy to demand response resources for demand reductions within each respective ISO and RTO region. Requiring ISOs and RTOs to pay the market price for energy to demand response resources for demand reductions in response to price signals will potentially reduce the market clearing price of electricity. The Commission has emphasized the importance of demand response as a vehicle for improving the competitiveness of organized wholesale electricity markets and ensuring supplies of energy at just, reasonable and not unduly discriminatory or preferential rates.[52]

29. *Internal review:* The Commission has reviewed the requirements pertaining to organized wholesale electric markets and determined the proposed requirements are necessary to its responsibilities under sections 205 and 206 of the FPA.

30. These requirements conform to the Commission's plan for efficient information collection, communication and management within the energy industry. The Commission has assured itself, by means of internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

31. Interested persons may obtain information on the reporting requirements by contacting: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*]. Comments on the requirements of the proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission], e-mail: *oira_submission@omb.eop.gov.*

IV. Environmental Analysis

32. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[53] The Commission concludes that neither an Environmental Assessment nor an Environmental Impact Statement is required for this NOPR under section 380.4(a)(15) of the Commission's regulations, which provides a categorical exemption for approval of actions under sections 205 and 206 of the FPA relating to the filing of schedules containing all rates and charges for the transmission or sale of electric energy subject to the Commission's jurisdiction, plus the classification, practices, contracts and regulations that affect rates, charges, classifications, and services.[54]

V. Regulatory Flexibility Act Certification

33. The Regulatory Flexibility Act of 1980 (RFA)[55] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[56] ISOs and RTOs, not small entities, are impacted directly by this rule.

34. California Independent System Operator Corp. (CAISO) is a non-profit organization comprised of more than 90 electric transmission-owning companies and generators operating in its markets and serving more than 30 million customers.

35. New York Independent System Operator, Inc. (NYISO) is a non-profit organization that oversees wholesale electricity markets serving 19.2 million customers. NYISO manages a 10,775-mile network of high-voltage lines.

36. PJM Interconnection, LLC (PJM) is comprised of more than 450 members including power generators, transmission owners, electricity distributors, power marketers, and large industrial customers, serving 13 States and the District of Columbia.

37. Southwest Power Pool, Inc. (SPP) is comprised of 50 members serving 4.5 million customers in eight States and has 52,301 miles of transmission lines.

38. Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a non-profit organization with over 131,000

[52] Order No. 719 at P 16.

[53] Order No. 486, *Regulations Implementing the National Environmental Policy Act,* 52 FR 47897, FERC Stats. & Regs. Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[54] 18 CFR 380.4(a)(15) (2009).

[55] 5 U.S.C. 601–12 (2000).

[56] The RFA definition of "small entity" refers to the definition provided in the Small Business Act, which defines a "small business concern" as a business that is independently owned and operated and that is not dominant in its field of operation. *See* 15 U.S.C. 601(3) (2000) (citing to section 3 of the Small Business Act, 15 U.S.C. 632 (2000)). The Small Business Size Standards component of the North American Industry Classification system defines a small utility as one that, including its affiliates, is primarily engaged in the generation, transmission, or distribution of electric energy for sale, and whose total electric output for the preceding fiscal years did not exceed 4 MWh. 13 CFR 121.202 (Sector 22, Utilities, North American Industry Classification System, NAICS) (2004).

megawatts of installed generation. Midwest ISO has 93,600 miles of transmission lines and serves 15 States and one Canadian province.

39. ISO New England, Inc. (ISO–NE) is a regional transmission organization serving six States in New England. The system is comprised of more than 8,000 miles of high-voltage transmission lines and several hundred generation facilities, of which more than 350 are under ISO–NE's direct control.

40. The Commission believes this rule will not have a significant economic impact on a substantial number of small entities, and therefore no regulatory flexibility analysis is required.

VI. Comment Procedures

41. The Commission invites interested persons to submit comments on the proposed regulatory text that commenters may wish to discuss. Comments are due 45 days after publication in the **Federal Register**. Comments must refer to Docket No. RM10–17–000,[57] and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

42. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

43. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

44. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

45. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m. Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

46. From FERC's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

47. User assistance is available for eLibrary and the FERC's Web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at 1–866–208–3676) or e-mail at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov.*

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By direction of the Commission. Commissioner Moeller is concurring in part and dissenting in part with separate statement attached.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

In consideration of the foregoing, the Commission proposes to amend Chapter I, Title 18 of the *Code of Federal Regulations* as follows:

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Amend § 35.28 by adding paragraph (g)(1)(v) to read as follows:

§ 35.28 Non-discriminatory open access transmission tariff.

* * * * *

(g) * * *

(1) * * *

(v) *Demand response compensation in energy markets.* Each Commission-approved independent system operator or regional transmission organization that has a tariff provision permitting demand response resources to participate as a resource in the energy market by reducing consumption of electric energy from their expected levels in response to price signals must pay to those demand response providers, in all hours, the market price for energy for these reductions.

* * * * *

Note: The following material will not appear in the Code of Federal Regulations.

UNITED STATES OF AMERICA FEDERAL ENERGY REGULATORY COMMISSION

Demand Response Compensation in Organized Wholesale Energy Markets, Docket No. RM10–17–000

PJM Interconnection, L.L.C., Docket No. EL09–68–000

Issued March 18, 2010.

MOELLER, Commissioner, *concurring, in part* and *dissenting, in part:*

As our country's demand for energy increases, the reduction of energy usage through demand response programs will play a critical role in meeting our needs and it is my hope that this nascent industry will thrive and succeed. In the Energy Policy Act of 2005, Congress established a policy to encourage the use of demand response by: (1) facilitating the deployment of technology to enable customers to participate in demand response programs; and (2) eliminating unnecessary barriers to demand response participation.[1]

Even before this law was passed, this Commission supported similar policies in the organized electric markets by encouraging the use of price responsive demand during high priced energy periods.[2]

Demand response is playing an increasingly critical role in our nation's energy supply mix. Additional demand response has the potential to produce more efficient market outcomes, contribute to a cleaner environment,[3] result in lower costs to customers, and help to check market power since it provides a countervailing willingness to reduce demand in the face of high prices.[4] With respect to prices, studies have shown that sometimes a small decrease in demand from demand response resources during peak periods can significantly reduce market prices. In sum, the benefits that demand

[57] Because this NOPR terminates Docket No. EL09–68–000, comments should not refer to that proceeding.

[1] Energy Policy Act of 2005, Pub. L. No. 109–58 § 1252(f), 119 Stat. 594 (2005).

[2] *PJM Interconnection, L.L.C.,* 99 FERC ¶ 61,227, at 61,943 (2002) see also Order No. 719 at P 16 (''Thus, enabling demand-side resources * * * improves the economic operation of electric power markets by aligning prices more closely with he value customers place on electric power.'')

[3] A recent report by the National Research Council, *Hidden Costs of Energy: Unpriced Consequences of Energy Production and Use,* provides estimates of the cost associated with air pollution as the result of energy production.

[4] *California Indep. Sys. Operator Corp.,* 116 FERC ¶ 61,274, at P 689.

response resources can bring to the energy markets are proven and significant.

The initial success of demand response has resulted in a steady maturation of the demand response industry. However, as the industry continues to mature, we must ensure that our policies are properly tailored to guide the development of demand response in a manner that will result in economically-efficient outcomes. Moving too quickly to reach a desired result can result in unintended consequences—and I believe that today's decision to propose a standard payment could have unintentional effects on both demand response participation and the efficient operation of the organized markets over the longer term.

In today's notice of proposed rulemaking (NOPR), the majority concludes that the Commission should require a standard payment to compensate demand response resources. Specifically, the majority's proposed outcome would be that these resources are paid the market price (*i.e.,* the locational marginal price or "LMP") for energy reductions in all 8,760 hours of the year. This determination is followed by questions such as whether other compensation designs could also work; questions that I believe would have been more appropriately asked *prior* to establishing this NOPR.[5] For that reason, I believe that a preliminary issuance (such as a Notice of Inquiry) should have been established to collect and analyze the evidence in advance of initiating a formal rulemaking proceeding.

While the majority claims that it is "concerned that compensation for demand response in PJM and other RTO and ISO markets may no longer be just and reasonable", the NOPR lacks a thorough discussion of the evidence that they relied upon to substantiate their concerns.[6] The NOPR also lacks a sufficient explanation of the "experience" that FERC has recently gained that would otherwise support the conclusion that the organized electric markets "fail to compensate demand response at levels that reflect the marginal value of the resource being used by the RTO or ISO to balance supply and demand."[7]

To the contrary, the record in Docket No. EL09–68–000 shows wide disagreement in the industry regarding the issue of demand response compensation. In that proceeding, State utility commissions,[8] the grid operator, industry economists, and the market participants all reached various conclusions regarding the question of how to compensate demand response resources in PJM.[9] In light of such rigorous debate, I am not sure if the Commission has a sustainable rationale to support a finding that the proposed rule is just and reasonable and that the existing compensation methods (that have been approved by this Commission) are no longer just and reasonable.

In fact, only recently did the Commission issue an order that not only sustained the manner by which PJM compensates demand response resources but also encouraged PJM and its stakeholders to identify and analyze issues to improve their demand response program.[10] Subsequently, PJM filed a detailed report explaining that while the stakeholder process did not yield a consensus position, the PJM Board moved forward and developed a compromise solution that was designed to strengthen its demand response markets.[11] In lieu of evaluating the merits of the proposal approved by PJM's Board, the NOPR terminates the PJM docket and directs PJM and its stakeholders to focus on whether demand response resources should be paid the market price—a question that has undoubtedly been analyzed, addressed and debated at numerous stakeholder meetings.

Since today's NOPR does not sufficiently explain the need for a uniform compensation approach, I am troubled by the decision to terminate PJM's individual proceeding. If approved, PJM's efforts toward developing a compromise solution for its market would have likely resulted in additional demand response participation and its associated benefits. However, with this NOPR's issuance, PJM and the other RTOs must now refrain from making changes to its demand response compensation rules pending the outcome of the rulemaking proceeding. The NOPR may also discourage some emerging organized markets from continuing to evolve toward the LMP model, as well as discourage some non-organized regions from seriously considering moving toward a market structure.

Ultimately, I want demand response to thrive and succeed in *all* the energy markets.[12] However, there are only so many policy decisions and rulemakings that this Commission can make to encourage its development. As mentioned in the preamble, the primary barrier to increased demand response is the disconnect between retail and wholesale prices and the remedy resides at the retail level where there is a lack of dynamic pricing. The approach embraced in the NOPR may also lead to a situation where residential ratepayers could be subsidizing other classes of service while unable to participate themselves in demand response

[5] To the extent that this NOPR asks questions to determine whether the proposed rule is just and reasonable, I concur.

[6] NOPR at n. 57. In support of the conclusion that compensation may no longer be just and reasonable, the preamble provides an example involving PJM's Economic Load Response Program and the drop of settled demand reductions experienced after the subsidy payments expired per the terms of PJM's tariff. NOPR at P 10. While the cited level of reduction is a fact, the PJM market monitor stated that "[w]hile the removal of the incentive program, effective November 2007, may have reduced participation, the exact role of the elimination of the incentive program is not known because there were changes to other key factors which directly impact participation." *Citing* Monitoring Analytics, *Barriers to Demand Side Response* in PJM, at 22 (July 1, 2009). More recently, the PJM market monitor recognized that between 2008 and 2009, "[t]here were many factors contributing to the lower levels of participation and lower revenues in the Economic Program, including lower price levels in 2009, lower load levels, and improved measurement and verification." Notably, while payments from the Economic Program have fallen substantially since 2007, capacity revenue for demand response has increased significantly (rising 114% to $303 million from 2008 to 2009). *Citing* Monitoring Analytics, *State of the Market Report* for PJM, at 111 (March 11, 2010).

[7] NOPR at P 13.

[8] Compare the position of the Indiana Utility Regulatory Commission (*i.e.,* LMP less the generation portion of retail rates (LMP–G) is an accepted indication of cost-effectiveness) with the position taken by the New Jersey Board of Public Utilities and the District of Columbia Public Service Commission (*i.e.,* compensation for demand response should be based solely on LMP). Comments filed in Docket No. EL09–68–000.

[9] While there appears to be no disagreement that the correct price signal for all customers is the LMP, the debate centers on whether demand response resources should be *paid* the LMP *or* should realize the *value* of LMP if they choose to reduce demand. Additionally, at certain times, the LMP can become negative, meaning that generators must pay into the market to the extent they generate power. Should demand response resources likewise be required to pay into the market during negative LMP events, or should they be exempt?

[10] *PJM Industrial Customer Coalition* v. *PJM Interconnection, L.L.C.,* 121 FERC ¶ 61,315, at P 29 (2007) (Wellinghoff and Kelly, Comm'rs, dissenting).

[11] PJM did note that the concept of paying LMP–G received considerable support and "conservatively could be said to have garnered at least a three-quarters majority approval." *See* PJM Supplemental Report in Docket No. EL09–68–000 at 24–25.

[12] My concern here goes to highlight the differences between regions with competitive wholesale markets and those that consist of largely bilateral market structures. By imposing a uniform compensation requirement, this proposed rulemaking could further exacerbate bifurcated approach toward national policy: entities in a competitive wholesale market must comply with increasingly burdensome requirements while entities operating in bilateral markets are often free from requirements that otherwise advance national policy goals.

programs. Absent attention to these issues, it will be difficult for any proposal to place generation and demand response on a precisely level playing field.

Until then, this Commission must review what options it has available without resorting to policies that would adversely enable the short-term development of demand response at the expense of its longer-term success. In closing, I believe that demand response programs have great potential to enhance the organized energy markets and I look forward to their continued development. I am concerned, however, that a one-size-fits-all approach could result in uneconomic outcomes that ultimately set back the future development of demand response.

Philip D. Moeller,
Commissioner.

[FR Doc. 2010–6478 Filed 3–26–10; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 40

[Docket No. RM09–13–000]

Time Error Correction Reliability Standard

March 18, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Pursuant to section 215 of the Federal Power Act, the Commission proposes to remand the proposed revised Time Error Correction Reliability Standard developed by the North American Electric Reliability Corporation (NERC) in order for NERC to develop several modifications to the proposed Reliability Standard. The proposed action ensures that any modifications to Reliability Standards will be just, reasonable, not unduly discriminatory or preferential, and in the public interest.

DATES: Comments are due April 28, 2010.

ADDRESSES: Interested persons may submit comments, identified by Docket No. RM09–13–000, by any of the following methods:

• *eFiling:* Comments may be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov.* Documents created electronically using word processing software should be filed in the native application or print-to-PDF format and not in a scanned format. The Commission accepts most standard word processing formats and commenters may attach additional files with supporting information in certain other file formats. Attachments that exist only in paper form may be scanned. Commenters filing electronically should not make a paper filing. Service of rulemaking comments is not required.

• *Mail/Hand Delivery:* Commenters that are not able to file comments electronically must mail or hand deliver an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Mindi Sauter (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6830.

Scott Sells (Technical Information), Office of Electric Reliability, Division of Reliability Standards, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6664.

SUPPLEMENTARY INFORMATION:

Notice of Proposed Rulemaking

March 18, 2010

1. Pursuant to section 215 of the Federal Power Act (FPA),[1] the Commission proposes to remand the Time Error Correction Reliability Standard (BAL–004–1) developed by the North American Electric Reliability Corporation (NERC) in order for NERC to develop several modifications to the proposed Reliability Standard, as discussed below.[2]

I. Background

A. EPAct 2005 and Mandatory Reliability Standards

2. Section 215 of the FPA requires a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Specifically, the Commission may approve, by rule or order, a proposed Reliability Standard or modification to a Reliability Standard if it determines that the Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[3] Once approved, the Reliability Standards may be enforced by the ERO, subject to Commission oversight, or by the Commission independently.[4]

3. Pursuant to section 215 of the FPA, the Commission established a process to select and certify an ERO[5] and, subsequently, certified NERC as the ERO.[6] On April 4, 2006, NERC submitted a petition seeking approval of 107 proposed Reliability Standards, including BAL–004–0.[7] On March 16, 2007, the Commission issued Order No. 693 approving 83 of these 107 Reliability Standards, including BAL–004–0, and directing other actions related to 56 of the approved Reliability Standards.

1. Time Error Correction Generally

4. Time Error occurs when a synchronous Interconnection operates at a frequency (number of cycles per second) that is different from the Interconnection's Scheduled Frequency. Interconnections control to 60 Hz (60 cycles per second), however, the control is imperfect and over time will result in the average frequency being either above 60 Hz or below 60 Hz. This discrepancy between actual frequency and Scheduled Frequency results from an imbalance between generation and interchange and load and losses, which also results in Inadvertent Interchange.[8] Time Error Correction is the procedure Reliability Coordinators and Balancing Authorities follow to reduce Time Error and regulate the average frequency closer to 60 Hz. The Time Error Correction Reliability Standard sets forth the process that Reliability Coordinators and Balancing Authorities follow to offset their Scheduled

[1] 16 U.S.C. 824o.

[2] The Commission is not proposing any new or modified text to its regulations. Rather, as provided in 18 CFR part 40, a proposed Reliability Standard will not become effective until approved by the Commission, and the Electric Reliability Organization must post on its website each effective Reliability Standard.

[3] 18 U.S.C. 824o(d)(2).

[4] *Id.* 824o(e)(3).

[5] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[6] *North American Electric Reliability Corp.,* 116 FERC ¶ 61,062 (ERO Certification Order), *order on reh'g & compliance,* 117 FERC ¶ 61,126 (2006), *aff'd sub nom. Alcoa, Inc.* v. *FERC,* 564 F.3d 1342 (D.C. Cir. 2009).

[7] *See Petition of the North American Electric Reliability Council and North American Electric Reliability Corporation for Approval of Reliability Standards,* April 4, 2006 at 28–29, Docket No. RM06–16–000.

[8] Inadvertent Interchange occurs when unplanned energy transfers cross Balancing Authority boundaries, typically where a Balancing Authority experiences an operational problem that prevents its net actual interchange of energy from matching its net scheduled interchange with other Balancing Authorities within the Interconnection.

Frequency to reliably correct for the accumulated Time Error. The efficiency of Time Error Corrections is determined by the participation of all Balancing Authorities within the Interconnection. Coordination and oversight by all Balancing Authorities and Reliability Coordinators is necessary to ensure that Time Error Corrections are performed reliably.

2. NERC's Proposed Time Error Correction Reliability Standard Revisions

5. On March 16, 2007, the Commission issued Order No. 693, which, among other things, approved the currently effective Time Error Correction Reliability Standard, BAL–004–0.[9] On March 11, 2009, NERC filed a petition for Commission approval of the revised Time Error Correction Reliability Standard, designated BAL–004–1. The petition states that the proposed Reliability Standard would supersede the existing Reliability Standard, and is intended to ensure that Interconnection Time Monitors will continue to volunteer for that role during an interim time period during which NERC and the industry will consider significant changes in how to manage Time Error Correction. NERC states that a potential more permanent solution already is incorporated in the scope of its ongoing Project 2007–05—Balancing Authority Controls.

6. The Time Error Correction Reliability Standard applies to Reliability Coordinators and Balancing Authorities. NERC states that, while in NERC's view Time Error itself is not a reliability issue, correcting for Time Error can affect reliability, and therefore the methods used for Time Error Correction must be carried out by the Balancing Authorities and Reliability Coordinators within each Interconnection in accordance with NERC Reliability Standards.

7. NERC indicates that designating an Interconnection Time Monitor is primarily an issue for the Eastern Interconnection. The Midwest ISO currently performs this function for the Eastern Interconnection. In the Western Interconnection, the Western Electricity Coordinating Council (WECC) uses automatic Time Error Correction, although periodic manual corrections still are required and are coordinated by WECC.[10] The Electric Reliability Council of Texas performs Time Error Correction functions for the Texas Interconnection.

8. NERC states that BAL–004–1 ensures that Time Error Corrections are conducted in a manner that does not adversely affect the reliability of the Interconnection.

3. Time Error Correction Reliability Standard Requirements

9. NERC's petition summarizes the proposed changes to the Time Error Correction Reliability Standard's compliance Requirements, as described below.[11]

10. *Requirement R1:* Requirement R1 currently states that only a Reliability Coordinator is eligible to serve as an Interconnection Time Monitor, and that the NERC Operating Committee shall designate a single Reliability Coordinator in each Interconnection to serve as Interconnection Time Monitor. The proposed changes would remove the requirement that the NERC Operating Committee designate Interconnection Time Monitors. NERC indicates that the change would vest authority for designating Interconnection Time Monitors with the NERC Board of Trustees, based on NERC Operating Committee review and recommendation. NERC states that, once the proposed standard is approved, the NERC Board of Trustees will formally designate Interconnection Time Monitors.

11. *Requirement R2:* NERC proposes to remove the current Requirement R2 in its entirety; the current Requirement R2 states that the Interconnection Time Monitor will monitor Time Error and shall initiate or terminate corrective action orders in accordance with the North American Energy Standards Board (NAESB) Time Error Correction Procedure. NERC asserts that NERC Reliability Standards should not compel an entity to comply with NAESB business practices.

12. *Requirement R3:*[12] Requirement R3 instructs Balancing Authorities to participate in a Time Error Correction when directed by the Reliability Coordinator serving as the Interconnection Time Monitor. The text of that Requirement would remain the same.

13. *Requirement R4:*[13] Requirement R4 states that any Reliability Coordinator, either on its own accord or at the request of a Balancing Authority within its footprint, may request that the Interconnection Time Monitor terminate a Time Error Correction for reliability reasons. The text of that Requirement also would remain the same.

14. *Reference Document:* NERC states that its Operating Committee has approved a "Time Monitoring Reference Document," which details a process for identifying the Reliability Coordinator that will serve as the Interconnection Time Monitor for each Interconnection and outlines the responsibilities of Reliability Coordinators serving as Interconnection Time Monitors. NERC included the Reference Document in its filing; however, NERC indicates that the document is presented for informational purposes only, and that NERC is not requesting Commission approval of the Reference Document.

4. Time Error Correction Reliability Standard Development

15. The NERC Operating Committee submitted a Standard Authorization Request (SAR) to the NERC Standards Committee on July 11, 2007, proposing changes to BAL–004–0. The Operating Committee requested that the Standards Committee use the "Urgent Action" process in addressing the proposed revisions. At its September 11, 2007 meeting, the Standards Committee determined to post the SAR and proposed standard changes using the Urgent Action process, stating that the potential loss of a willing Reliability Coordinator to serve as the Interconnection Time Monitor justified use of the Urgent Access process.

16. NERC conducted an initial ballot in October 2007, the results of which included ten negative ballots, including seven with comments. All seven commenters were concerned that the proposed revisions left unclear what entity will assume the responsibility for serving as the Time Monitor for each Interconnection. Three commenters also indicated that the revisions did not state responsibility for directing

[9] *Mandatory Reliability Standards for the Bulk-Power System,* Order No. 693, FERC Stats. & Regs. ¶ 31,242, *order on reh'g,* Order No. 693–A, 120 FERC ¶ 61,053 (2007).

[10] Under Regional Reliability Standard BAL–004–WECC–01 (Automatic Time Error Correction), Balancing Authorities within WECC generally are required to continuously automatically correct for their contribution to Time Error using automatic generation control systems. However, certain operational events may lead to suspension of automatic Time Error Correction, requiring manual Time Error Corrections to be completed at another time, under WECC's direction. *See, Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction,* Order No. 723, 127 FERC ¶ 61,176 (2009) (approving WECC Automatic Time Error Correction regional Reliability Standard).

[11] Appendix A to this order, showing in redline the changes NERC proposed to the Time Error Correction Reliability Standard, is available for viewing at *http://www.ferc.gov* in the eLibrary version of this document.

[12] With the elimination of current Requirement R2, the current Requirement R3 would become Requirement R2.

[13] Similarly, the current Requirement R4 would become Requirement R3.

implementation of a Time Error Correction. Two commenters suggested that the Reliability Standards should include a requirement to comply with NAESB business practices because those practices also are FERC-approved. One commenter suggested revising Requirement R2 to omit the reference to the NAESB business practice, and one commenter objected to use of the Urgent Action process.

17. In response to these comments, the NERC Operating Committee indicated that it was working on a documented process for identifying the entity that would serve as the Interconnection Time Monitor for each Interconnection and for reviewing the Interconnection Time Monitors' performance on a forward-going basis, as it has done for many years.

18. NERC posted its response to the comments on November 8, 2007, and subsequently conducted a recirculation ballot, as required under NERC's Rules of Procedure. The revised standard passed with 97.45 percent of the 157 ballot pool participants voting, resulting in a weighted segment approval of 94.10 percent.

19. The NERC Board of Trustees approved the revised Reliability Standard on March 26, 2008, and NERC filed its petition on March 11, 2009. NERC requests that BAL–004–1 become effective on the first day of the first quarter after applicable regulatory approval or, in those jurisdictions where regulatory approval is not required, upon Board of Trustees approval.

II. Discussion

20. The Commission proposes to remand the proposed Reliability Standard, BAL–004–1, in order for NERC to develop several modifications, as discussed below.

A. Requirement R1

21. NERC proposes to revise Requirement R1 to remove from the Reliability Standard the requirement that the NERC Operating Committee designate one Reliability Coordinator as the Interconnection Time Monitor in each Interconnection, arguing that the NERC Operating Committee is not a user, owner or operator of the Bulk-Power System and it is not appropriate for that Committee alone to assign requirements to users, owners or operators of the Bulk-Power System without NERC Board of Trustees' approval. NERC further argues that it is not appropriate for a stakeholder-based committee to designate a particular entity for a position that will be accountable for complying with a Reliability Standard Requirement.

Commission Analysis:

22. With regard to Requirement R1, the Commission is concerned that the Time Monitor selection process is contained in a guidance document that is not subject to Commission review and may be changed without notice. Commission review of proposed changes, and appropriate notice of such proposed changes, is necessary to ensure that the changes are just, reasonable, not unduly discriminatory or preferential, and in the public interest. Thus, the Commission proposes, on remand, to direct NERC to describe the Interconnection Time Monitor designation process within a Commission-approved document, such as NERC's Rules of Procedure or within the Reliability Standard itself.

B. Requirement R2

23. The revised Reliability Standard also proposes to delete Requirement R2 in its entirety. Requirement R2 includes the requirement that Interconnection Time Monitors monitor Time Error and initiate or terminate corrective action in accordance with the NAESB Time Error Correction Procedure. NERC states that now that the "Version 0 Reliability Standards" are mandatory and enforceable, much of the process to implement Time Error Corrections has become a NAESB procedure, because Time Error Correction itself is not a reliability issue. NERC explains that the fact that an Interconnection Time Monitor chooses to act and initiate a Time Error Correction based on the NAESB procedure has no reliability relevance and that NERC Reliability Standards should not compel an entity to comply with NAESB business practices, and that eliminating Requirement R2 accomplishes this. NERC adds that there are no current concerns with the performance of the volunteer Interconnection Time Monitors, and that the NERC Operating Committee will continue to address Interconnection Time Monitor performance in the future should the Commission approve the proposed Reliability Standard. NERC concludes that approving the proposed Reliability Standard would maintain the *status quo* and serve the best interests of reliability.

Commission Analysis:

24. In Order No. 672, the Commission identified a number of criteria it will use in determining whether a proposed Reliability Standard or a proposed revision to a Reliability Standard is just, reasonable, not unduly discriminatory or preferential, and in the public interest.[14] One of these criteria is that a proposed Reliability Standard must be clear and unambiguous as to what is required and who is required to comply.[15] The Commission believes the proposal to remove Requirement R2 in its entirety does not satisfy this criterion, and therefore proposes to remand the proposed Reliability Standard. Removing Requirement R2 makes the Reliability Standard incomplete and ambiguous, since it would not explain the circumstances under which a Time Error Correction needs to be initiated or ended, indicate that Time Error Correction must be performed, or identify the entity that has the obligation and authority to initiate a Time Error Correction.

25. The Commission therefore proposes to remand the proposed Reliability Standard and, further proposes that, on remand, NERC should modify its proposed changes to Requirement R2 to (1) indicate that the Time Monitor, designated according to a process described in a Commission-approved document as discussed above, is responsible for initiating or terminating a Time Error Correction in a reliable manner; and (2) explain the circumstances under which the Time Monitor should start or end a Time Error Correction. The Commission is not persuaded by NERC's argument that much of the process to implement Time Error Corrections is now just a voluntary NAESB procedure, because Time Error Correction itself is not a reliability issue. In Order No. 693, we disagreed with arguments that Time Error Correction is really more a NAESB business practice. Rather, we stated that the Time Error Correction Reliability Standard is intended to ensure that Time Error Corrections are performed in a manner that does not adversely affect reliability, and the technical details, including the means to carry out the procedure, are a reliability issue.[16]

26. We also are not persuaded by NERC's argument that, because the Interconnection Time Monitors are performing well, we should approve removal of technical details from the Reliability Standard. The Reliability Standard should include technical details regarding what is required from all participants involved with Time Error Corrections to avoid confusion

[14] *Rules Concerning Certification of the Electric Reliability Organization; and Procedures for the Establishment, Approval, and Enforcement of Electric Reliability Standards,* Order No. 672, FERC Stats. & Regs. ¶ 31,204, *order on reh'g,* Order No. 672–A, FERC Stats. & Regs. ¶ 31,212 (2006).

[15] *Id.* P 325.

[16] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 383.

regarding each participant's expectations and obligations. While the Commission does not oppose NERC's proposal to remove the clause in Requirement R2 directing the Time Monitor to proceed in accordance with the NAESB Time Error Correction Procedure, as noted above, the proposed Reliability Standard is incomplete and ambiguous as it does not include pertinent technical details regarding the Time Error Correction process. Additionally, when an issue has both reliability and business aspects, the Commission has directed NERC and NAESB to work together to coordinate their efforts in order to provide a workable Reliability Standard that addresses the reliability issue.[17] The Commission expects that to occur here.

27. NERC has stated that in its view Time Error itself is not a reliability risk, and the purpose of the Time Error Correction Reliability Standard is not to account for Time Error, but to ensure Time Error Corrections are implemented in a reliable manner. Any time the Balancing Authorities within an Interconnection undertake an actual modification to their generation dispatch to correct for Time Error, it must be coordinated and monitored by a Reliability Coordinator to ensure that each Balancing Authority schedules the same frequency and preclude negative impacts on reliable operation, allowing the Reliability Coordinator to maintain a wide area view of other activities, planned or unplanned, occurring on the system at the time. Any Reliability Coordinator can qualify to perform the Interconnection Time Monitor function, and each Interconnection requires one Time Monitor, which is responsible for determining when to implement Time Error Corrections, and for coordinating their execution. The requirement to appoint a single Time Monitor for each Interconnection ensures that a Time Error Correction is well coordinated and communication runs smoothly. If more than one Time Monitor were assigned to each Interconnection, there would be a risk of uncoordinated Time Error Corrections, resulting in inefficient Time Error Corrections and inadvertent power flows (which could lead to congestion issues on the Bulk-Power System (potentially reaching or exceeding System Operating Limits or Interconnection reliability Operating Limits)) or failure to terminate a Time Error Correction quickly (due to unclear lines of authority, communication issues, or confusion when requested by a Reliability Coordinator or Balancing Authority) if necessary to preserve system reliability.

28. The current, previously-approved Reliability Standard ensures that Time Error Corrections are implemented in a reliable manner by requiring one designated Reliability Coordinator to serve as Time Monitor for each Interconnection and to perform the function of calling for Time Error Corrections, taking into account system conditions, and to halt Time Error Corrections if system conditions warrant, as well as requiring Balancing Authorities to participate and follow the specified procedures. The current Reliability Standard also allows any Reliability Coordinator or Balancing Authority to call for termination of a Time Error Correction for reliability considerations.

29. The greater reliability risk associated with Time Error Correction appears to lie in executing a Time Error Correction rather than in monitoring for Time Error. Accordingly, any penalties arising from the Time Error Correction Reliability Standard should appropriately consider and differentiate between the differing levels of reliability risk arising from differing actions required from Interconnection Time Monitors and should shield the Interconnection Time Monitors from liability beyond their control such as when a Balancing Authority fails to respond appropriately to directives from the Interconnection Time Monitors.

30. Thus, NERC should consider developing compliance evaluation measures that assess the reliability risk associated with each action, and tie any penalty to each action. Requirement R2 might be divided into sub-requirements in order to facilitate development of such compliance evaluation measures.

31. The Commission further reminds NERC that, in Order No. 693, we directed the Electric Reliability Organization to develop additional Measures and add Levels of Non-Compliance to assure that the requirements in the current Requirement R3 are achieved.[18]

32. The Commission seeks comments on the proposals discussed above.

III. Information Collection Statement

33. The Office of Management and Budget (OMB) regulations require that OMB approve certain reporting and recordkeeping (collections of information) imposed by an agency.[19] The information contained here is also subject to review under section 3507(d) of the Paperwork Reduction Act of 1995.[20] As stated above, the Commission previously approved, in Order No. 693, the Reliability Standard that is the subject of the current rulemaking. In the first instance, the Commission is proposing to remand the proposed revisions to BAL–004–1, thus the reporting burden would not change. In the event that the Commission, after receiving comments, determines to adopt the proposed revisions to the Reliability Standard, they are minor; therefore, they would not add to or increase entities' current reporting burden. Thus, the current proposal would not materially affect the burden estimates relating to the currently effective version of the Reliability Standard presented in Order No. 693.[21]

34. For example, the proposed modifications to BAL–004–1 do not modify or otherwise affect the collection of information already in place. Moreover, the proposed removal of business practice-related requirements from Reliability Standard BAL–004–1 likely will decrease, not increase, the reporting burden associated with the current, Commission-approved version of the Reliability Standard.

35. Thus, the proposed modifications to the current Reliability Standard effected by this proposed rule will not increase the reporting burden nor impose any additional information collection requirements.

36. The Commission does not foresee any additional impact on the reporting burden for small businesses, because the proposed modifications are minor and do not increase the existing burden. However, we will submit this proposed rule to OMB for informational purposes.

Title: Modification of Time Error Correction Reliability Standard.

Action: Proposed Collection.

[17] *See, e.g., Modification of Interchange and Transmission Loading Relief Reliability Standards and Electric Reliability Organization Interpretation of Specific Requirements of Four Reliability Standards,* 123 FERC ¶ 61,064, at P 49 (2008) ("The Commission has long supported the coordination of business practices and Reliability Standards. As early as May 2002, the Commission urged the industry expeditiously to establish the procedures for ensuring coordination between NAESB and NERC."); *Preventing Undue Discrimination and Preference in Transmission Service,* Order No. 890–A, FERC Stats. & Regs. ¶ 31,261, at P 56 (2007), *order on reh'g,* Order No. 890–B, 123 FERC ¶ 61,299 (2008) ("The Commission affirms the decision in Order No. 890 to rely on the NERC reliability standards development process, and the NAESB business practices development process, to achieve a more coherent and uniform determination of ATC. We disagree that this conflicts with the Commission's obligations under section 215 of the FPA."); *Electricity Market Design and Structure,* 99 FERC ¶ 61,171, at P 22 (2002), *order on reh'g,* 101 FERC ¶ 61,297 (2002) ("We also consider coordination between business practice standards and reliability standards to be critical to the efficient operation of the market.).

[18] Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 384.

[19] 5 CFR 1320.11.

[20] 44 U.S.C. 3507(d).

[21] *See* Order No. 693, FERC Stats. & Regs. ¶ 31,242 at P 1905–07.

OMB Control No.: 1902–0244.

Respondents: Businesses or other for-profit institutions; not-for-profit institutions.

Frequency of Responses: On Occasion.

Necessity of the Information: This proposed rule proposes to remand modifications to a Reliability Standard pertaining to Time Error Corrections.

Internal Review: The Commission has reviewed the proposed Reliability Standard and made a determination that its action is necessary to implement section 215 of the FPA. These requirements, if modified as discussed above should conform to the Commission's expectation for Time Error Correction as well as procedures within the energy industry.

37. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE. Washington, DC 20426 [Attention: Michael Miller, Office of the Executive Director, Phone: (202) 502–8415, fax: (202) 273–0873, e-mail: *michael.miller@ferc.gov*].

38. For submitting comments concerning the collection(s) of information and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Information and Regulatory Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone (202) 395–4650, fax: (202) 395–7285, e-mail: *oira_submission@omb.eop.gov*].

IV. Environmental Analysis

39. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[22] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment. Included in the exclusion are rules that are clarifying, corrective, or procedural or that do not substantially change the effect of the regulations being amended.[23] The actions proposed herein fall within this categorical exclusion in the Commission's regulations.

[22] *Regulations Implementing the National Environmental Policy Act of 1969,* Order No. 486, FERC Stats. & Regs. ¶ 30,783 (1987).

[23] 18 CFR 380.4(a)(2)(ii).

V. Regulatory Flexibility Act Analysis

40. The Regulatory Flexibility Act of 1980 (RFA)[24] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Agencies are not required to provide such an analysis if a rule would not have such an effect. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a proposed rule and that minimize any significant economic impact on a substantial number of small entities. The Small Business Administration's Office of Size Standards develops the numerical definition of a small business. (*See* 13 CFR 121.201.) For electric utilities, a firm is small if, including its affiliates, it is primarily engaged in the transmission, generation and/or distribution of electric energy for sale and its total electric output for the preceding twelve months did not exceed four million megawatt hours.

41. NERC and the entities that act as Interconnection Time Monitors, and thus would be affected by the proposed Reliability Standard, do not fall within the RFA's definition of small entity. NERC is the Commission-certified Electric Reliability Organization for the continental United States, and is responsible for developing and enforcing mandatory Reliability Standards for the United States. NERC enforces compliance with NERC Reliability Standards through a rigorous program of monitoring, audits and investigations, and the imposition of financial penalties and other enforcement actions for non-compliance.

42. The Midwest Independent Transmission System Operator, Inc. (Midwest ISO) is a non-profit organization with over 131,000 megawatts of installed generation. Midwest ISO has 93,600 miles of transmission lines and serves 15 states and one Canadian province.

43. The Electric Reliability Council of Texas (ERCOT) manages the flow of electric power to 22 million Texas customers. As the independent system operator for the region, ERCOT schedules power on an electric grid that connects 40,000 miles of transmission lines and more than 550 generation units.

44. The Western Electricity Coordinating Council (WECC) is responsible for coordinating and promoting bulk electric system reliability in the Western Interconnection. WECC's service territory extends from Canada to Mexico. It includes the provinces of Alberta and British Columbia, the northern portion of Baja California, Mexico, and all or portions of the 14 Western states between.

[24] 5 U.S.C. 601–12.

45. In any event, the RFA is not implicated by this proposed rule because by remanding the proposed Reliability Standard the Commission is maintaining the status quo until future revisions to the Reliability Standard are filed with and approved by the Commission.

VI. Comment Procedures

46. The Commission invites interested persons to submit comments on the matters and issues proposed in this notice to be remanded, including any related matters or alternative proposals that commenters may wish to discuss. Comments are due April 28, 2010. Comments must refer to Docket No. RM09–13–000, and must include the commenter's name, the organization they represent, if applicable, and their address in their comments.

47. The Commission encourages comments to be filed electronically via the eFiling link on the Commission's Web site at *http://www.ferc.gov*. The Commission accepts most standard word processing formats. Documents created electronically using word processing software should be filed in native applications or print-to-PDF format and not in a scanned format. Commenters filing electronically do not need to make a paper filing.

48. Commenters that are not able to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE., Washington, DC 20426.

49. All comments will be placed in the Commission's public files and may be viewed, printed, or downloaded remotely as described in the Document Availability section below. Commenters on this proposal are not required to serve copies of their comments on other commenters.

VII. Document Availability

50. In addition to publishing the full text of this document in the **Federal Register,** the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through the Commission's Home Page (*http://www.ferc.gov*) and in the Commission's Public Reference Room during normal business hours (8:30 a.m. to 5 p.m.

Eastern time) at 888 First Street, NE., Room 2A, Washington, DC 20426.

51. From the Commission's Home Page on the Internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

52. User assistance is available for eLibrary and the Commission's web site during normal business hours from FERC Online Support at (202) 502–6652 (toll free at (866) 208–3676) or email at *ferconlinesupport@ferc.gov*, or the Public Reference Room at (202) 502–8371, TTY (202) 502–8659. E-mail the Public Reference Room at *public.referenceroom@ferc.gov*.

By direction of the Commission.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2010–6481 Filed 3–26–10; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 202

[Docket No. FDA–2009–N–0582]

RIN 0910–AG27

Direct-to-Consumer Prescription Drug Advertisements; Presentation of the Major Statement in Television and Radio Advertisements in a Clear, Conspicuous, and Neutral Manner

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations concerning direct-to-consumer (DTC) advertisements of prescription drugs. Specifically, the proposed rule would implement a new requirement of the Federal Food, Drug, and Cosmetic Act (the act), added by the Food and Drug Administration Amendments Act of 2007 (FDAAA), that the major statement in DTC television or radio advertisements (or ads) relating to the side effects and contraindications of an advertised prescription drug intended for use by humans be presented in a clear, conspicuous, and neutral manner. FDA is also proposing, as directed by FDAAA, standards that the agency would consider in determining whether the major statement in these advertisements is presented in the manner required by FDAAA.

DATES: Submit written or electronic comments on the proposed rule by June 28, 2010. Submit comments on information collection issues under the Paperwork Reduction Act of 1995 by April 28, 2010, (see section "VI. Paperwork Reduction Act of 1995" of this document). See section II.D of this document for the proposed effective date of a final rule based on this proposed rule.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2009–N–0582 and/or RIN 0910–AG27, by any of the following methods, except that comments on information collection issues under the Paperwork Reduction Act of 1995 must be submitted to the Office of Regulatory Affairs, Office of Management and Budget (OMB) (see the "Paperwork Reduction Act of 1995" section of this document).

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name, docket number, and Regulatory Information Number (RIN) for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by April 28, 2010, to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: *For information concerning human drug products*: Marissa Chaet Brykman, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 3238, Silver Spring, MD, 20993–0002, 301–796–1200; or *For information concerning human biological products*: Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD, 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Section 502(n) of the act (21 U.S.C. 352(n)) requires that manufacturers, packers, and distributors (sponsors) who advertise prescription human and animal drugs, including biological products for humans, disclose in advertisements certain information about the advertised product's uses and risks. For prescription drugs and biologics, section 502(n) of the act requires advertisements to contain "a true statement" of certain information including "information in brief summary relating to side effects, contraindications, and effectiveness" as required by regulations issued by FDA.

FDA's current prescription drug advertising regulations in § 202.1 (21 CFR 202.1) describe requirements for print and broadcast advertisements. Print advertisements must include a brief summary of each of the risk concepts from the product's approved package labeling (§ 202.1(e)(1)). Advertisements that are broadcast through media such as television, radio, or telephone communications systems must disclose the major side effects and contraindications of the advertised product in either the audio or audio and visual parts of the presentation (§ 202.1(e)(1)); this disclosure is known as the "major statement" (Ref. 1).[1]

[1] If a broadcast advertisement omits the major statement, or if the major statement minimizes the major side effects and contraindications associated with the use of the drug, the advertisement could render the drug misbranded in violation of the act, 21 U.S.C. 352(n) and section 201(n) of the act (21

The current regulations further specify that an advertisement does not satisfy the 502(n) statutory requirement of containing a "true statement" of certain information if it: (1) Is false or misleading with respect to side effects, contraindications, or effectiveness; or (2) fails to present a fair balance between information relating to side effects and contraindications and information relating to effectiveness of the drug; or (3) fails to reveal material facts in light of the representations made in the advertisement or with respect to the consequences that may result from the use of the drug as recommended or suggested in the advertisement (§ 202.1(e)(5)). The regulations describe circumstances where advertisements may be false, lacking in fair balance, or otherwise misleading, including when an advertisement "fails to present information relating to side effects and contraindications with a prominence and readability reasonably comparable with the presentation of information relating to effectiveness of the drug, taking into account all implementing factors such as typography, layout, contrast, headlines, paragraphing, white space, and any other techniques apt to achieve emphasis" (§ 202.1(e)(7)(viii)).

Thus, under the current regulations the presentation of risk information in an advertisement for a prescription human or animal drug is required to be comparable in prominence and readability to the presentation of effectiveness information in the advertisement. If an advertisement presents effectiveness information in a clear and conspicuous manner, risk information is required to be presented in a comparable manner.

A. New FDAAA Requirements for DTC Radio and Television Ads

Section 901(d)(3)(A) of FDAAA (Public Law No. 110–85) amended the act by adding to section 502(n) the provision that "[i]n the case of an advertisement for a drug subject to section 503(b)(1) presented directly to consumers in television or radio format and stating the name of the drug and its conditions of use, the major statement relating to side effects and contraindications shall be presented in a *clear, conspicuous, and neutral manner*" (emphasis added). This amendment augments FDA's existing authority by requiring television and radio advertisements for human prescription drugs to present the major statement (i.e., the disclosure of the major side effects and contraindications of the drug) in a clear, conspicuous, and neutral manner, regardless of the manner in which effectiveness information is presented in the advertisement. In this document, section 502(n) of the act, as amended by section 901(d)(3)(A) of FDAAA, will be referred to as "section 502(n) as amended."

Section 901(d)(3)(B) of FDAAA states that "[n]ot later than 30 months after the date of the enactment of the Food and Drug Administration Amendments Act of 2007, the Secretary of Health and Human Services shall by regulation establish standards for determining whether a major statement relating to side effects and contraindications of a drug, described in section 502(n) of the Federal Food, Drug, and Cosmetic Act * * * is presented in the manner required under such section." As instructed by this provision of FDAAA, we are proposing standards for determining whether a major statement is presented in a "clear, conspicuous, and neutral manner" in DTC television and radio advertisements for prescription drugs intended for use by humans.[2]

B. Standards of Other Federal Agencies for Clear and Conspicuous

In developing the proposed standards set forth in this rule, FDA has considered standards developed by other Federal agencies (including the Federal Trade Commission (FTC), the Department of Treasury (DOT), the Commodity Futures Trading Commission (CFTC), and the Securities Exchange Commission (SEC)) for determining whether disclosures in television and radio advertisements, as well as disclosures in other contexts, are "clear and conspicuous." These standards are described in this document. Many of these standards are highly relevant to the current rulemaking in that they also aim to ensure that required disclosures are effectively presented so that consumers are not misled or deceived about the attributes of the product or service that is the subject of the communication. The purpose of the standards proposed here is similar: The effective communication of risk information in major statements in consumer-directed prescription drug ads so that consumers receive a fair and accurate impression of the drug being promoted.

FTC regulates the advertising of a variety of products, including over-the-counter (OTC) drugs, dietary supplements, and certain medical devices.[3] To prevent unfair or deceptive acts or practices, it has issued statements and regulations that establish standards for determining whether disclosures in both broadcast and print advertisements are clear and conspicuous. For example, in 1970, FTC issued an enforcement policy statement (Ref. 2) that set forth the following standards for determining whether an affirmative disclosure in a television commercial is "clear and conspicuous":

1. The disclosure should be presented simultaneously in both the audio and video portions of the television commercial (dual modality);

2. The video portion of the disclosure must contain letters of sufficient size so that it can easily be seen and read on all television sets, regardless of picture tube size;

3. The video portion of the disclosure should contain letters of a color or shade that readily contrast with the background, and the background should consist of only one color or shade;

4. No other sounds, including music, should occur during the audio portion of the disclosure;

5. The video portion of the disclosure should appear on the screen for a sufficient duration to enable it to be completely read by the viewer ("presentation rate"); and

6. The audio and video portions of the disclosure should immediately follow the specific sales presentations to which they relate and should occur each time the representation is presented during the advertisement.

The enforcement policy further states that "[t]elevision advertisers should also consider the audience to whom the disclosure is directed in order to assure that persons (such as children) can understand the full meaning of the disclosure".

Similarly, in the **Federal Register** of May 6, 1998 (63 FR 24996 at 25002), FTC summarized the factors it takes into account in determining whether audio messages, such as radio ads, are "clear and conspicuous" as follows:

1. Volume;

2. Cadence;

3. Placement of a disclosure; and

U.S.C. 321(n)), and FDA's implementing regulations, § 202.1(e).

[2] Note that section 502(n) as amended applies only to "television or radio" broadcast advertisements, whereas FDA's regulations at § 202.1(e)(1) apply to advertisements broadcast through "radio, television, or telephone communications systems." Consistent with section 502(n) as amended, the proposed requirements in this rule are limited to television and radio advertisements.

[3] FTC has jurisdiction over OTC drug advertising under 15 U.S.C. 52, and its authority over device advertising extends to devices that are not restricted devices. See section 502(q) and (r) of the act.

4. The existence of any sounds that detract from the effectiveness of the disclosure.

FTC has also provided specific requirements for "clear and conspicuous" disclosures under the Telephone Disclosure and Dispute Resolution Act of 1992 (Public Law 102–556) (Telephone Disclosure Act). This legislation, in part, mandated that certain required disclosures appear in the advertising of pay-per-call services and directed FTC to prescribe regulations to govern the advertising of these services to avoid the abuse of consumers. In the **Federal Register** of August 9, 1993 (58 FR 42364), FTC issued regulations under the Telephone Disclosure Act that mandate that these required disclosures in advertising of pay-per-call services "be made 'clearly and conspicuously'" (16 CFR 308.3(b)(2), (c)(2), (d)(2), and (f)(2)). The regulations at 16 CFR 308.3(a) set forth the following standards for these disclosures:

1. The disclosures shall be made in the same language as that principally used in the advertisement.

2. Television video and print disclosures shall be of a color or shade that readily contrasts with the background of the advertisement.

3. In print advertisements, disclosures shall be parallel with the base of the advertisement.

4. Audio disclosures, whether in television or radio, shall be delivered in a slow and deliberate manner and in a reasonably understandable volume.

5. Nothing contrary to, inconsistent with, or in mitigation of, the required disclosures shall be used in any advertisement in any medium; nor shall any audio, video, or print technique be used that is likely to detract significantly from the communication of the disclosures.

6. In any program-length commercial, required disclosures shall be made at least three times (unless more frequent disclosure is otherwise required) near the beginning, middle, and end of the commercial.

FTC has also issued guides for environmental marketing claims. These guides state that to be effective, the required qualifications or disclosures "should be sufficiently clear, prominent and understandable to prevent deception. Clarity of language, relative type size and proximity to the claim being qualified, and an absence of contrary claims that could undercut effectiveness, will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent" (16 CFR 260.6(a)). Similar standards for "clear and conspicuous" were set forth by Congress in House Report 102–839, which was written to accompany the House bill (H.R. 3865), the National Waste Reduction, Recycling, and Management Act (NWRRMA). This bill directed the Administrator of the Environmental Protection Agency (EPA), in consultation with FTC, to set, among other things, standards and criteria for common environmental marketing claims being used in advertising to inform consumers about the environmental impact or environmental attributes of a package or product during any part of its life cycle (Ref. 3). House Report 102–839 states that "[a] disclosure in a broadcast commercial [for environmental marketing claims] is considered *clear and conspicuous* if, in the case of an oral broadcast, it is as clear and understandable in pace and volume as other information, and, in the case of a visual broadcast, it is presented against a contrasting background and is displayed for sufficient duration and in large enough letters to be read easily" (emphasis added).

In addition to these standards for disclosures in advertisements, a number of Federal regulations provide similar standards in contexts other than advertising for disclosures that are required to be presented in a "clear and conspicuous" manner to consumers. For example, in 2000 and 2001, a number of Federal agencies, including FTC, SEC, DOT, and CFTC, provided standards for "clear and conspicuous" disclosures in regulations that were implemented as a result of the privacy provisions of the Gramm-Leach-Bliley Act (Public Law 106–102) (GLB Act). Subtitle A of title V of the GLB Act, captioned "Disclosure of Nonpublic Personal Information," stated, among other things, that a financial institution must provide its customers with "notice" of its privacy policies and practices. These notices, which can be written or electronic, are required by regulations issued by the above agencies to be "clear and conspicuous" such that "[the] notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice." See 16 CFR 313.3(b)(1); 12 CFR 40.3(b)(1), 216.3(b)(1), 332.3(b)(1), 573.3(b)(1); and 17 CFR 160.3(b)(1), 248.3(c)(1). The regulations give examples of when notices meet these standards. Specifically, a notice is clear or "reasonably understandable" if it:

1. Presents the information in the notice in clear, concise sentences, paragraphs and sections;

2. Uses short explanatory sentences or bullet lists whenever possible;

3. Uses definite, concrete, everyday words and active voice whenever possible;

4. Avoids multiple negatives;

5. Avoids legal and highly technical business terminology whenever possible; and

6. Avoids explanations that are imprecise and readily subject to different interpretations.

See 16 CFR 313.3(b)(2)(i); 12 CFR 40.3(b)(2)(i), 216.3(b)(2)(i), 332.3(b)(2)(i), 573.3(b)(2)(i); and 17 CFR 160.3(b)(2)(i), 248.3(c)(2)(i). A notice is conspicuous or "designed to call attention" if it:

1. Uses a plain-language heading to call attention to the notice;

2. Uses a typeface and type size that are easy to read;

3. Provides wide margins and ample line spacing;

4. Uses boldface or italics for key words; and

5. Uses distinctive type size, style, and graphic devices, such as shading or sidebars when the notice is combined with other information.

See 16 CFR 313.3(b)(2)(ii); 12 CFR 40.3(b)(2)(ii), 216.3(b)(2)(ii), 332.3(b)(2)(ii), 573.3(b)(2)(ii); and 17 CFR 160.3(b)(2)(ii), 248.3(c)(2)(ii).

Overall, FDA believes that the standards described previously for "clear and conspicuous" disclosures provide appropriate information for the agency to use in developing its own standards for evaluating major statements. Several of the policies and regulations described previously are similar to the ones set forth in this proposed rule in that they apply to consumer comprehension of disclosure information in television and radio advertisements. Furthermore, in issuing these standards, the previously mentioned agencies and Congress had goals similar to those of FDA in this rulemaking—ensuring that required information is effectively communicated to consumers so that consumers are not misled or deceived. For these reasons, we believe it is appropriate to propose standards in this rule consistent with those used by the previously mentioned agencies.

We further note that common themes are seen throughout these other standards for "clear and conspicuous" disclosures. These themes include ease of comprehension of the language used in the disclosure; the formatting and location of textual information in the disclosure; audio considerations such as pacing, volume, and qualities of speech; and the presence of any distracting elements during the disclosure. We believe that these factors all contribute to whether the audience will notice, attend to, and comprehend the risk

information presented in the major statement in television and radio ads. Therefore, we believe it is appropriate to incorporate these themes into our standards for determining whether the major statement in a television or radio advertisement for a prescription drug is presented in a clear and conspicuous manner.

C. Standards for Neutral

FDA is not aware of any previous standards or regulations concerning the definition of "neutral manner" in the context of required disclosures. FDA considers "neutral manner" to mean "unbiased manner" and has proposed standards accordingly. (See section II of this document.) In addition, FDA conducted a study on the impact of distraction on consumer understanding of risk and benefit information in DTC prescription drug television broadcast advertisements (72 FR 47051, August 22, 2007). FDA recognizes the tradeoff in this study between the specificity and control of the research setting, and consequently the utility of the findings (and their generalizability) to the field as a whole. FDA also intends to carry out further empirical studies on how best to provide consumers risk and benefit information in DTC advertisements (see, for example, 74 FR 29490, June 22, 2009). However, despite these limitations, FDA believes that the results of this study may provide helpful information for the agency to consider in determining whether a major statement is presented in a "neutral" manner. FDA is in the process of analyzing the results of the study and plans to place a report of the results of its analyses in the docket once they are complete. We will provide an opportunity for public comment on the results of the analyses either during the existing comment period or through reopening the comment period if necessary.

II. Proposed Amendments

Section 502(n) as amended requires that in DTC television or radio advertisements for prescription drugs intended for use by humans, the major statement relating to the side effects and contraindications of an advertised prescription drug be presented in a clear, conspicuous, and neutral manner. FDA proposes to implement the new FDAAA requirements for DTC television and radio advertisements by revising and adding to current § 202.1(e)(1) of the agency's prescription drug advertising regulations.

A. Major Statement in DTC Television and Radio Advertisements

The second sentence of current § 202.1(e)(1) includes specific requirements for advertisements broadcast through media such as radio, television, or telephone communications systems. The agency is proposing to make this current provision a separate paragraph, proposed § 202.1(e)(1)(i), with the heading "Broadcast advertisements." The agency is also proposing to add to the provision the term "major statement" in parentheses after the phrase "major side effects and contraindications" to reflect the terminology used in section 502(n) as amended.[4]

B. Proposed Standards for Clear, Conspicuous, and Neutral

FDAAA also directed FDA to establish standards for determining whether a major statement is presented in a "clear, conspicuous, and neutral manner" in DTC television and radio advertisements for prescription drugs intended for use by humans. FDA is proposing these standards in proposed § 202.1(e)(1)(ii) with the heading "Clear, conspicuous, and neutral manner." As presented in proposed § 202.1(e)(1)(ii), a major statement would be considered to be presented in this manner if:

1. Information is presented in language that is readily understandable by consumers;
2. Audio information is understandable in terms of the volume, articulation, and pacing used;
3. Textual information is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily; and
4. The advertisement does not include distracting representations (including statements, text, images, or sounds or any combination thereof) that detract from the communication of the major statement.

These standards are consistent with the factors described and discussed in FDA's draft guidance for industry entitled "Presenting Risk Information in Prescription Drug and Medical Device Promotion" (Ref. 4).

Standard # 1: The language used to communicate risks in the major statement must be comprehensible to the intended audience of the ad. Thus, while promotional materials directed to health care professionals can reasonably describe risks in medical language, promotional materials directed to consumers should use everyday words or terms that are understandable to consumers. For example, if a drug's approved prescribing information includes a risk of "syncope," a consumer-directed ad should mention a risk of "fainting," rather than using the medical term "syncope." The major statement should also avoid the use of vague terms or explanations that are readily subject to different interpretations. For example, if a drug's prescribing information indicates that more than half of patients taking the drug experienced a particular adverse event, the major statement should accurately convey the frequency of this risk (e.g., "more than half") rather than vaguely indicating that "*some* patients experienced" the particular adverse event.

Standard # 2: Audio-related factors such as volume, articulation, and pacing can add to or detract from consumer comprehension of the major statement. For example, markedly reducing volume or delivering the major statement in an inarticulate manner hinders the audience's comprehension of the risks being presented. Pacing is another critical speech consideration. Risk information must be presented at a pace that allows the audience to hear and process it. If it is presented in a manner that is too quick for the audience to process or is otherwise inarticulate, it would not be considered to be clear and conspicuous.

Standard # 3: When information from the major statement is conveyed in the visual as well as the audio portion of a television ad, this information must be placed in a manner that allows it to be easily read, such as parallel with the base of the ad. This information must also be placed such that it appears concurrently with any directly related audio information. There must also be sufficient contrast between visually-presented text and the background to highlight the risk information. If a television ad presents risk information in a way that would make it difficult to discern (e.g., using white letters on a light gray background or gray letters on a black background), the presentation would lack appropriate conspicuousness. The contrast between text displayed on the screen and the background color of the screen influences the prominence of the text once attention has been gained, and must be designed so that the risk information can be easily seen and read. Furthermore, the text must remain on

[4] FDA is interpreting the term "major statement" in the statutory requirement that was added to section 502(n) of the act to refer to the disclosure of information relating to the "major" side effects and contraindications of the advertised drug that is required in broadcast advertisements under existing § 202.1(e)(1).

the screen for sufficient time to allow for consumers to identify and read and process the information. Font size and type style are additional factors that FDA will consider when evaluating whether the major statement is communicated in the required manner (Refs. 5 through 10). For example, the presentation of a small visual superscript in a television ad is not likely to be effective in communicating information. Visual risk presentations must be in a type size and style that allows them to be easily read by viewers.

Standard # 4: When elements of the advertisement such as images, text, graphics or sounds are presented in such a way as to significantly detract from the major statement, consumers are likely to be deterred from attending to and comprehending the risk information being presented. To achieve a "neutral," unbiased presentation of the major statement and to avoid undercutting its effectiveness, the major statement must not be presented in competition with other elements if these elements would arrest the attention and distract consumers from the presentation of the risk information. Examples of these elements may include, but are not limited to, visuals, images, graphics or background music, sound effects, or other noises. This is of particular concern when the distracting elements convey additional benefit information, with the result being that risk information is not effectively communicated and a biased picture (i.e., one that is heavily weighted towards benefit information) of the product is conveyed by the ad.

FDA believes that consideration of these standards will result in major statements in consumer ads that effectively communicate the risk information needed for consumers to receive a fair and accurate impression of the prescription drug product being promoted. FDA recognizes that these standards require judgment in their application. Therefore, the agency does not intend to prescribe a set formula for "clear, conspicuous, and neutral" major statements because there is more than one way to achieve these standards in a television or radio ad. FDA intends to be flexible enough to consider the variety of techniques sponsors may use to appropriately convey required risk information in prescription drug ads. Sponsors have the flexibility to be creative in designing their ads as long as all of the standards listed here are complied with such that the major statement is communicated effectively to consumers and the overall message that the advertisement—including the major statement—conveys to consumers is accurate and non-misleading.

FDA will continue to evaluate these standards to ensure that they result in consumer-directed ads that effectively communicate necessary risk information in a clear, conspicuous, and neutral way. We specifically request any comments on standards to establish "neutral." In addition, FDA considered adding a fifth standard that would require that the major statement in television advertisements be included in both the audio and visual parts of the presentation (see also section V.H of this document). This approach is similar to the FTC standard, which states that for disclosures in a television advertisement to be clear and conspicuous, they should be presented simultaneously in both the audio and video (Ref. 2). We believe presenting the major statement in both the audio and visual portions of television ads could enhance the clarity, conspicuousness, and neutrality of this information. While this proposed rule does not contain such a standard, we are soliciting public comment on whether the final rule should contain a standard requiring that major statements in television ads be presented in both the audio and visual parts of the ad.

C. Minor Changes

We are also proposing minor changes to update § 202.1(e)(1) and make the regulation clearer. We are proposing to add punctuation, including setting off with commas the phrase "unless adequate provision is made for dissemination of the approved or permitted package labeling in connection with the broadcast presentation," and to replace the word "shall" with the word "must" in the two places it is found in § 202.1(e)(1).

D. Proposed Effective Date

In accordance with FDAAA, the requirement that the major statement in DTC television and radio advertisements be presented in a clear, conspicuous and neutral manner has been in effect since March 25, 2008. FDA proposes that the standards in any final rule that may issue based on this proposal become effective 90 days after its publication in the **Federal Register**. Any DTC television or radio ad for a prescription drug intended for use by humans that airs on or after the effective date will be required to comply with the standards. FDA seeks public comment on its proposed 90 day effective date for any final rule that may issue based on this proposed rule.

III. Legal Authority

This rule, if finalized, would amend § 202.1 in a manner consistent with the agency's current understanding and application of this provision. FDA was directed by FDAAA to establish standards for determining whether the major statement in television and radio advertisements for prescription drugs intended for use by humans is presented in a clear, conspicuous, and neutral manner. Furthermore, FDA has the authority to take the actions proposed in this rule under various statutory provisions. These provisions include sections 201, 301, 502, 505, 512, and 701 of the act (21 U.S.C. 321, 331, 352, 355, 360b, and 371).

IV. Environmental Impact

FDA has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). OMB has determined that this proposed rule is a significant regulatory action.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because small entities rarely engage in television or radio advertising of prescription drugs and the proposed changes would impose little additional cost per advertisement, the agency proposes to certify that the final rule will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing "any rule that includes any Federal mandate that may result in the expenditure by State, local,

and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year." The current threshold after adjustment for inflation is $133 million, using the most current (2008) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule to result in any 1-year expenditure that would meet or exceed this amount.

Under section 901(d)(3)(A) of FDAAA, Congress has mandated that the major statement in prescription drug television and radio advertisements be presented in a "clear, conspicuous and neutral manner." Section 901(d)(3)(B) of FDAAA mandates that FDA issue regulations that establish standards for determining whether a major statement is presented in such a manner. In accord with this legislation, the proposed rule would implement provisions of FDAAA by requiring that the major statement be presented in a clear, conspicuous, and neutral manner; and by presenting standards for determining whether such major statements are presented in a clear, conspicuous, and neutral manner.

A. Scale of Advertisements

Industry expenditures on DTC advertisements of prescription drugs have increased dramatically since 1997. Prior to 1997, the majority of DTC promotion occurred in print; companies were unclear at that time about how they could comply with the requirements applicable to broadcast media (in particular, the requirement in § 202.1(e)(1) that advertisers make "adequate provision" for dissemination of the product's package labeling). In 1997, FDA issued a draft guidance describing an approach for fulfilling the requirement for adequate provision in connection with broadcast advertising for prescription products (Ref. 1). Following the issuance of the draft guidance, companies expanded their consumer-directed promotional efforts to include broadcast advertisements. Advertising expenditures increased as companies began to use the costlier medium of broadcast to promote their products to consumers. From a reported total expenditure of less than $1 billion in 1997 (Ref. 11), industry spending on DTC advertisements for prescription drugs peaked at $4.9 billion in 2007, before declining to $4.4 billion in 2008 (Ref. 12). This amount far exceeded the $387 million spent on professional journal advertising, but was somewhat less than the $6.5 billion spent on detailing efforts by industry sales representatives in that year (Ref. 12), and only a fraction of the $14.1 billion retail value of free samples distributed in 2008 (Ref. 13). In contrast, the total value of U.S. prescription drug sales reached almost $300 billion in 2008 (Ref. 14).

In 2008, FDA's Center for Drug Evaluation and Research (CDER) reviewed 271 DTC television advertisements and 94 radio advertisements for products under their jurisdiction. The television ads were submitted by 41 companies and the radio ads were submitted by 20 companies. The Center for Biologics Evaluation and Research (CBER) reviewed 10 DTC television ads from 2 companies and 5 radio ads from 3 companies. Overall, 48 different companies submitted advertisements to 1 or more centers in 2008.

B. Need for Regulation

Section 502(n) as amended requires that the major statement be presented in a clear, conspicuous, and neutral manner, but the statute and our current regulations do not describe standards for what FDA would consider clear, conspicuous, and neutral. This proposed rule is needed to implement this statutory requirement.

Further, in discussing the need for Federal regulatory action, OMB has advised Government agencies that "[w]hen it is time-consuming or costly for consumers to evaluate complex information about products or services (e.g., medical therapies), they may expect government to ensure that minimum quality standards are met" (Ref. 15). OMB continues, however, that "the mere possibility of poor information processing is not enough to justify regulation. If you think there is a problem of information processing that needs to be addressed, it should be carefully documented." Therefore, the following discussion: (1) Addresses the percentage of recent television and radio advertisements that do not include clear, conspicuous, and neutral presentations of risk information, (2) describes the effects of unclear presentations on consumer understanding of product risks, and (3) explores the health consequences that may result from these misunderstandings.

C. Baseline Practice

To develop a baseline estimate of the percentage of major statements that were not presented in a clear, conspicuous, and neutral manner, FDA's Division of Drug Marketing, Advertising, and Communications (DDMAC) in CDER examined a randomly selected sample of 35 television and radio drug advertisements disseminated in 2008. As shown in table 1 of this document, this survey found that approximately one-third of the reviewed advertisements could be judged in violation of a clear, conspicuous, and neutral standard. Such results clearly suggest that current regulatory and statutory requirements have not adequately prevented the broadcast of a significant number of potentially misleading or deceptive discussions of product risk.

TABLE 1.—DDMAC'S REVIEW OF RADIO AND TELEVISION ADVERTISEMENTS FROM 2008

Outcome	Radio ads (n=5)	Television ads (n=30)	Overall (n=35)
Violates existing fair balance regulations and violates clear, conspicuous, and neutral (CCN) statute	2	7	9
Violates only existing fair balance regulations	1	1	2
Does not violate existing fair balance regulations but violates CCN statute	0	3	3
Does not violate existing fair balance regulations and does not violate CCN statute	2	19	21
Does not violate CCN statute	3 (60%)	20 (67%)	23 (66%)
Violates CCN statute	2 (40%)	10 (33%)	12 (34%)

We understand, however, that this survey may not be indicative of present and future television and radio promotions. First, television advertisements have a relatively short life and typically run for about 3 months to a year (Ref. 16). The affected firms will have had several years since the 2007 enactment of FDAAA to refine later broadcast advertisements. Moreover, the Pharmaceutical Research and Manufacturers of America's (PhRMA's) publication of voluntary guidelines regarding DTC advertisements was revised in December 2008, to (among other things) specify that risks and safety information in DTC advertising should be presented in a "clear, conspicuous and neutral manner, and without distraction from the content" (Ref. 17). This guideline may influence industry performance and thereby decrease the number of television and radio advertisements that fail to present risk information in a clear, conspicuous, and neutral manner. Therefore, we expect that industry compliance would improve significantly over the sample in table 1 of this document by the time a final rule takes effect. Those DTC television and radio advertisements that do not comply with the new standards at the time a final rule takes effect would, however, need to be revised or removed. To refine this baseline for analysis, FDA seeks public comment and industry data on pertinent trends in pharmaceutical television and radio promotions.

D. Effects on Consumer Understanding

The preceding discussion demonstrates that a significant number of recent broadcast advertisements have failed to present a clear, conspicuous, and neutral discussion of prescription drug risks. These omissions may be at least partially responsible for a lack of consumer comprehension of product hazards. When risk messages are presented in a vague or difficult to understand manner, they are easily misinterpreted and consumers are more likely to be misled. For example, 60 percent of the responding physicians in one large survey believed that DTC advertisements for prescription drugs provided patients with little or no understanding about the risks and negative effects of the products (Ref. 18). Over 65 percent of these physicians observed that DTC advertisements may lead patients to confuse the relative risks and benefits of advertised drugs. The proposed rule would help address this lack of understanding by providing standards for the major statement in television or radio advertisements for prescription drugs.

E. Health Consequences

To the extent that risk information in current DTC advertisements is not presented in a clear, conspicuous, and neutral manner, this proposed rule could potentially have a positive effect on health outcomes through better communication of the risk information in prescription drug television and radio advertisements. The magnitude of these potential health benefits would vary with the influence of these promotions on consumer health decisions.

The growing body of research on the influence of DTC advertisements on public health has generated mixed results. The agency contracted with Eastern Research Group (ERG) in 2008 to review and summarize the relevant peer-reviewed literature on DTC advertising published between 2004 and 2008 (Ref. 19). This review was an extension of work already published by FDA in 2004 summarizing its survey research results on the public health impacts of DTC advertising (Ref 18). Highlights of some of the research findings in the ERG report are described as follows. See the ERG report for a comprehensive discussion of the literature covered by the review.

The purpose of DTC prescription drug advertising is to increase the demand for the advertised prescription drugs, and researchers have generally found that to have happened. In addition, some research has shown that DTC advertising for a particular drug increased the demand for the entire therapeutic class. Other effects include increased rates of drug therapy compliance, although the size of this effect may be small. DTC advertising has also been shown to produce indirect, or spillover, effects on consumer behavior, such as increasing the number of physician visits that detect treatable disease (Ref. 20).

On the other hand, positive outcomes are less probable when drug promotions are biased and provide an incomplete or confusing account of the drug's likely effects. Some analysts find that DTC ads cause physicians to waste valuable time responding to patient requests (Ref. 21) and can encourage an increased and sometimes inappropriate demand for the advertised products (Ref. 21 and 22).

This proposed rule could potentially improve the communication of risk information, thereby resulting in the audience receiving a more accurate net impression of the product's benefits and risks. We cannot quantify the magnitude of the health impact resulting from a potential improvement in risk communication because of the absence of studies that analytically assess the full range of advantages and disadvantages of DTC advertising for prescription drugs. One survey of the literature, for example, explains that "no studies have examined the impact of direct to consumer advertising on either health outcomes or examined the costs and health and social consequences of DTCA [DTC advertising]" (Ref. 23). Likewise, FDA has identified no authoritative research on the overall health consequences of DTC advertising. Without a measure of the overall impact of DTC ads, we cannot reasonably develop a quantifiable estimate of the incremental consequences of requiring more understandable risk discussions in DTC advertising. Nevertheless, it is plausible that providing standards for presenting risk information in DTC drug advertisements in a clear, conspicuous, and neutral manner could generate positive health benefits.

F. Costs of Compliance

FDA regulations currently require that broadcast advertisements present information relating to the major side effects and contraindications of the product, and the 2007 FDAAA requires that such information be presented in a clear, conspicuous, and neutral manner. The proposed regulation would provide standards for what would be considered clear, conspicuous, and neutral to further consumer comprehension. Once the rule is in effect, manufacturers would have to take these standards into account when developing advertising materials for television or radio.

This proposed rule would lead to the one-time cost to advertisers of setting up new guidelines or standard operating procedures for meeting the clear, conspicuous, and neutral criteria. FDA estimates that from one-third (17) to all of approximately 50 firms who submitted advertisements would bear these one-time costs. We tentatively estimate that these revisions would require 10 to 20 hours of upper management time at $134 per hour, 40 to 80 hours of marketing management time at a cost of $88 per hour, and 80 to 120 hours of technical writing time at a cost of $42 per hour.[5] The cost per revision would range from $8,220 to $14,760. We estimate the total one-time costs of the revisions to range from $140,000 (17 x $8,220) to $740,000 (50 x $14,760). FDA requests comments on

[5] Bureau of Labor Statistics, "Occupational Employment Statistics: May 2008 National Industry-Specific Occupational Employment and Wage Estimates, NAISC 325400—Pharmaceutical and Medical Manufacturing," Wages were increased by 40 percent to include fringe benefits. Downloaded January 2009. *http://www.bls.gov/oes/2008/may/naics4_325400.htm*

this estimated range of costs and its components.

FDA assumes that this proposed rule will not increase the length of broadcast time for radio and television ads. The requirement to present risk information in a clear, conspicuous, and neutral manner is already in effect in accordance with section 502(n) as amended. The proposed standards for determining clear, conspicuous, and neutral will provide guidance that should reduce regulatory uncertainty in developing major statements. Advertising agencies take great pains to create promotional programs that portray product attributes in the most favorable way. For the most part, advertising messages are crafted to be as persuasive as possible, while complying with applicable regulatory restrictions. In the design stage, ad developers consider and evaluate a variety of facts, features, layouts, and formats before making a final decision. The proposed rule would not require ads to be more intricate or exhaustive; on the contrary, the standards would encourage ads that are simpler and less dramatically charged. Thus, although the standards for clear, conspicuous, and neutral might constrain some design choices, the creation of compliant broadcasts would not require the use of a greater quantity of productive resources.

For the most part, key advertising agencies would be aware of the pertinent rules and would tailor their compositions accordingly. While in the short term, some additional draft submissions might occur as industry became familiar with the new standards, this incremental effort would be minimal. Indeed, because the requirement to present risk information in a clear, conspicuous, and neutral manner is already in effect in accordance with section 502(n) as amended, the issuance of defined standards should reduce regulatory uncertainty, which in turn could reduce regulatory costs.

To account for any additional burdens associated with third party disclosure attributable to section 901(d)(3)(A) and (d)(3)(B) of FDAAA, the agency estimates an additional 5 hours per television or radio advertisement would be required for about 420 ads per year, or a total burden of 2,100 hours per year (see table 2 of this document). The total cost for this burden is $184,800 per year assuming a wage rate of $88 per hour. Although most of this cost is associated with section 901(d)(3)(A) of FDAAA, a small fraction of this cost would be attributed to this proposed rule (section 901(d)(3)(B) of FDAAA).

Because the time period between issuance of any final rule based on this proposed rule and effective date of the final rule should be longer than the life cycle of most DTC television and radio advertisements, future advertisements should cost about the same to produce once the firm's guidelines (standard operating procedures) for clear, conspicuous, and neutral risk statements are incorporated. If the time period is not sufficient to encompass the life cycle of an advertisement, the likely response would be for the firm to revise the advertisement. Industry sources indicate that these revisions would on average cost $100,000 to $150,000 per television advertisement and $10,000 to $20,000 per radio advertisement. The agency seeks comments on this assessment of costs of compliance.

In summary, the incremental costs of compliance with this proposed rule include the following:

- a one-time cost to establish new guidelines or standard operating procedures of from $140,000 to $740,000;
- annual costs amounting to a small fraction of the total third party disclosure burden of $184,800; and
- a one-time cost of from $100,000 to $150,000 per television advertisement and from $10,000 to $20,000 per radio advertisement to revise any advertisement with a life cycle extending beyond the compliance date of the final rule.

G. Distributional Effects

It is also possible that some individual firms would lose market share if forced to make their risk information more understandable. Should the provision of more understandable risk information lead to reduced demand for particular products, the proposed rule could lead to lost revenue and reduced producer surplus for individual firms. The reduced demand for particular products, however, may lead to increased demand for substitute products. Losses for firms whose products experience reduced demand could be offset by gains accruing to firms whose products experience increased demand. The effect of such changes in demand could be a net benefit to society, depending on the magnitude of any positive health outcomes associated with changes in the consumption of prescription drugs, if any. To the extent that some lost revenues are not transferred to substitute drug products, these losses would not be offset.

H. Alternatives Considered

As directed by FDAAA, the agency is proposing standards for determining whether the major statement in television and radio prescription drug advertisements is presented in a clear, conspicuous, and neutral manner. FDA considered the following alternatives to this proposed rule.

We considered, as an alternative, relying on guidance rather than regulation for providing the standards for determining clear, conspicuous, and neutral. See, for example, FDA's draft guidance for industry entitled "Presenting Risk Information in Prescription Drug and Medical Device Promotion" (Ref. 4). Guidance documents, however, are not legally enforceable. Even if most firms would comply voluntarily, FDA needs to ensure that standards would be implemented for all important risk messages in prescription drug television and radio ads. In addition, because section 901(d)(3)(B) of FDAAA requires that FDA establish standards by regulation, this alternative would not conform to the statute.

We also considered requiring specific standards for how audio and visual disclosures should be formatted in advertisements, such as specific font sizes, contrast colors, placement of textual information, and language. We concluded, however, that this level of detail was unnecessary because there is more than one way to present risk information in a clear, conspicuous, and neutral manner.

We also considered requiring that the major statement in television advertisements be included in both the audio and visual parts of the presentation. This approach is similar to the FTC standard, which states that for disclosures in a television advertisement to be clear and conspicuous, they should be presented simultaneously in both the audio and video (Ref. 2). Research has shown that presenting the same information in both the audio portion and as visual superimposed text increases the comprehension of that information compared with information presented in only one of those modes. This has been called dual-mode processing and has been shown in multiple studies on advertising to improve recall of the communicated information over and above that seen in audio mode alone (Refs. 24 and 25). In addition to these specific studies on the use of superimposed text in ads, the literature suggests that a dual mode presentation of information results in greater recall and comprehension of information in a

wide variety of situations (Refs. 26 through 30). The theories to support this finding stem from theories of basic memory processing (Ref. 31). To learn and use knowledge, information first must be encoded in memory by being attended to or noticed, then stored in memory, and then retrieved from memory. When people attend to information in two modes (visual and audio), they may form two separate codes for that same information, resulting in greater elaboration of, or thinking about, the information than they might have with only one code (Ref. 32). It is also possible that presenting the information in two modes reduces possible interference from other messages that might be present on the screen at the time of the ad. Thus, presenting the major statement in both the audio and visual portions of television ads could enhance the clarity, conspicuousness, and neutrality of this information. FDA is specifically requesting comments on this alternative.

To estimate the costs of this alternative, we assume that none of the affected firms would be compliant. Therefore, based on 2008 submissions, approximately 50 firms would incur one-time costs to modify their standard operating procedures. We calculated the range of one-time costs for the proposed rule as $140,000 to $740,000. Because all 50 firms would bear these costs, the one-time costs for this alternative would be in the upper end of the range, from $410,000 to $740,000.

In addition, existing television ads, or television ads in the final stages of production, may need to be modified to include superimposed text and other adjustments. The agency estimates that modifications of existing advertisements to comply with this alternative may cost approximately $100,000 to $150,000 per television advertisement. We cannot predict the number, if any, of existing advertisements that would be revised. If all of the 281 television ads from 2008 required these changes, however, the additional one-time costs would be $28.1 to $42.2 million. The agency requests detailed data on these cost estimates.

I. Small Business Impact

FDA finds that the proposed regulation would not have a significant impact on a substantial number of small entities. The Small Business Administration (SBA) defines as small any pharmaceutical preparations manufacturing entity (NAICS 325412) with fewer than 750 employees and any biologics product manufacturing entity (NAICS 325414) with fewer than 500 employees. Among the 48 companies submitting television or radio advertisements to FDA in 2008, only about 5 would meet the SBA definition of small entity. Thus, we estimate that only a few of the manufacturers affected by the proposed rule would be a small business. We estimate the one-time cost to revise procedures for meeting the clear, conspicuous, and neutral criteria would range from $8,228 to $14,760 per firm. Because the time period between issuance of any final rule based on this proposed rule and the effective date of the final rule should be longer than the life cycle of most DTC television and radio advertisements, future advertisements should cost about the same to produce once the guidelines for clear, conspicuous, and neutral risk statements are incorporated. If the time period is not sufficient to encompass the life cycle of an advertisement, the likely response would be for the firm to revise the advertisement. Using the cost of revising television advertisements as an upper bound, industry sources indicate that these revisions would on average cost $100,000 to $150,000 per advertisement.

Because there is wide variation in the revenues of small firms, the agency cannot assess the impact of the one-time compliance costs as a percent of average firm revenues for those small businesses that produce television ads. However, firms spend on average about $1 million to produce a single television ad. The one-time compliance costs for adjusting procedures represents about 1 percent of the cost of a single ad. If a company needed to revise its existing advertising, the upper bound of compliance costs would range from 11 percent to 16 percent of the production cost of a single advertisement, which would be a small fraction of the firm's revenues.

Advertising agencies would not experience significant adverse economic impacts because the cost of producing compliant work products should be no greater than the cost of producing less informative advertisements. The agency seeks comments on this assessment.

VI. Paperwork Reduction Act of 1995

This proposed rule contains collections of information that are subject to review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 3520) (the PRA). "Collection of information" includes any request or requirement that persons obtain, maintain, retain, or report information to the agency, or disclose information to a third party or to the public (44 U.S.C. 3502(3) and 5 CFR 1320.3(c)). The title, description, and respondent description of the information collection are shown under this section with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

We invite comments on these topics: (1) Whether the collection of information is necessary for proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Direct-to-Consumer Prescription Drug Advertisements; Presentation of the Major Statement in Television and Radio Advertisements in a Clear, Conspicuous, and Neutral Manner

Description: Under § 202.1, FDA establishes requirements for advertisements for human and animal prescription drug products and biological products. The regulations apply to advertisements published in journals, magazines, other periodicals, and newspapers, and advertisements broadcast through media such as radio, television, and telephone communication systems. Under § 202.1(e)(1), FDA's regulations describe when a true statement of information in brief summary relating to side effects, contraindications, and effectiveness is required. In this proposed rule, the agency is proposing to amend these regulations. Specifically, under proposed § 202.1(e)(1)(ii), FDA would implement section 502(n) as amended, which requires that the major statement in a DTC television or radio advertisement for a prescription drug intended for human use be presented in a clear, conspicuous, and neutral manner. The rule also includes proposed standards for determining whether the major statement is presented in a clear, conspicuous, and neutral manner. Television and radio advertisements subject to the requirements at proposed § 202.1(e)(1)(ii) are subject to the PRA because these advertisements disclose information to the public.

According to FDA data, CDER estimates that approximately 300 television advertisements for prescription drugs would be prepared

by approximately 30 companies under proposed § 202.1(e)(1)(ii) annually and CBER estimates that approximately 15 of these advertisements would be prepared by approximately 5 companies annually. FDA anticipates that this estimate will moderately increase in the near future. The estimated total number of television advertisements under proposed § 202.1(e)(1)(ii) would be 315. Based on its experience reviewing television advertisements, FDA estimates that approximately 5 hours on average would be needed per advertisement to comply with the proposed requirement that the major statement in DTC television advertisements be presented in a clear, conspicuous, and neutral manner (proposed § 202.1(e)(1)(ii)).

Further, according to FDA data, CDER estimates that approximately 100 radio advertisements for prescription drugs would be prepared by approximately 20 companies under proposed § 202.1(e)(1)(ii) annually and CBER estimates that approximately 5 of these advertisements would be prepared by approximately 3 companies annually. FDA anticipates that this estimate will moderately increase in the near future. The estimated total number of radio advertisements under proposed § 202.1(e)(1)(ii) would be 105. Based on its experience reviewing radio advertisements, FDA estimates that approximately 5 hours on average would be needed per advertisement to comply with the proposed requirement that the major statement in DTC radio advertisements be presented in a clear, conspicuous, and neutral manner (proposed § 202.1(e)(1)(ii)).

FDA estimates the burden of this collection of information as follows:

TABLE 2.—ESTIMATED ANNUAL THIRD PARTY DISCLOSURE BURDEN[1]

21 CFR Section	Type of Submission	No. of Respondents	Annual Frequency per Disclosure	Total Annual Disclosures	Hours per Disclosure[3]	Total Hours
202.1(e)(1)(ii)2	Television Advertisements	35	9	315	5	1,575
	Radio Advertisements	23	5	105	5	525
Total		58	14	420	5	2,100

[1] FDA assumes that this proposed rule will not increase the length of broadcast time for radio and television ads.

[2] In accordance with section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)), and 5 CFR 1320.12(b), FDA has published in the FEDERAL REGISTER a 60-day notice soliciting public comment on the collections of information that result from current § 202.1, including the estimated burden of current requirements for third party disclosures in television and radio advertisements. See 75 FR 12756, March 17, 2010.

[3] The estimated hours represent the burden of complying with sections 901(d)(3)(A) and (d)(3)(B) of FDAAA as implemented by this proposed rule.

We specifically request comment on the burden hour estimates described previously in this document and in table 2 of this document.

Costs

In addition to the burden hours in table 2 of this document, FDA estimates the following costs associated with the information collection. Although the proposed rule neither requires nor recommends the creation of guidelines or standard operating procedures for meeting the clear, conspicuous, and neutral requirement, if implemented, it may lead some companies to incur a one-time cost for revising guidelines or standard operating procedures for ensuring compliance with the underlying requirement (see also section V.F of this document). We estimate that from 17 to 50 companies would bear these one-time costs, and that these revisions would require 10 to 20 hours of upper management time at $134 per hour, 40 to 80 hours of marketing management time at a cost of $88 per hour, and 80 to 120 hours of technical writing time at a cost of $42 per hour. The cost per revision would range from $8,220 to $14,760. We estimate the total one-time costs of the revisions to range from $140,000 (17 x $8,220) to $740,000 (50 x $14,760).

Finally, although future advertisements should cost about the same to produce once the companies' guidelines (standard operating procedures) for clear, conspicuous, and neutral risk statements are adopted, if the time period is not sufficient to encompass the life cycle of an advertisement, the likely response would be for the company to revise the advertisement. Based on industry sources, we estimate that these revisions would on average cost $100,000 to $150,000 per television advertisement and $10,000 to $20,000 per radio advertisement (see also section V.F of this document).

Description of Respondents: Manufacturers, packers, and distributors, and applicants with approved new drug applications (NDAs), abbreviated new drug applications (ANDAs), and biologics licensing applications (BLAs) and those that market prescription drugs for human use without an approved application.

The information collection provisions of this proposed rule have been submitted to OMB for review. Interested persons are requested to fax comments regarding information collection by (see **DATES** section of this document), to the Office of Information and Regulatory Affairs, OMB. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–7285, or e-mailed to *oira_submission@omb.eop.gov*. All comments should reference the title of this rule and include the FDA docket number found in brackets in the heading of this document.

VII. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies 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. Accordingly, the agency has concluded that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VIII. Request for Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that

individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday. (FDA has verified the Web site addresses, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. FDA guidance for industry, "Consumer-Directed Broadcast Advertisements," available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/ucm070065.pdf*.

2. CCH Trade Regulation Reporter, Paragraph 7569.09 "Clear and Conspicuous Disclosure," October 21, 1970.

3. H. Rept. No. 102–839, August 11, 1992.

4. FDA draft guidance for industry, "Presenting Risk Information in Prescription Drug and Medical Device Promotion," available at *http://www.fda.gov/downloads/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/UCM155480.pdf* (May 2009).

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7. Baker, S., "Provision of Effective Information," *British Dental Journal*, 201:100, 2006.

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13. IMS Health, Integrated Promotional Services™, Year 2008, Data Extracted on September 2009.

14. IMS Health, "IMS Health Reports U.S. Prescription Sales Grew 1.3 Percent in 2008 to $291 Billion," (*www.imshealth.com*, News Releases, March 19, 2009).

15. Office of Management and Budget, Circular A–4, September 17, 2003.

16. General Accounting Office, "Prescription Drugs: FDA Oversight of Direct-to-Consumer Advertising Has Limitations," GAO–03–177, p. 23, October 2002.

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18. Aikin, K., J. Swasy, and A. Braman, "Patient and Physician Attitudes and Behaviors Associated With DTC Promotion of Prescription Drugs—Summary of FDA Survey Research Results, Final Report," November 19, 2004.

19. Eastern Research Group, Inc., "Scientific Literature on Direct-to-Consumer Advertising of Prescription Pharmaceuticals, 2004–2008: Literature Review," January 2009.

20. Weissman, J.S., D. Blumenthal, A.J. Silk, et al., "Consumers' Reports on the Health Effects of Direct-to-Consumer Drug Advertising," *Health Affairs*, W3–82–W3–95, posted February 26, 2003, *http://content.healthaffairs.org/cgi/content/abstract/hlthaff.w3.82v1*.

21. Murray, E., B. Lo, L. Pollack, et al., "Direct-to-Consumer Advertising: Physicians' Views of Its Effects on Quality of Care and the Doctor-Patient Relationship," *Journal of the American Board of Family Practice*, 16(6):513–524, 2003.

22. Mintzes, B., M. Barer, R.L. Kravitz, et al., "Influence of Direct to Consumer Pharmaceutical Advertising and Patients' Requests on Prescribing Decisions: Two Site Cross Sectional Survey," *British Medical Journal*, 324:278–279, 2002.

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List of Subjects in 21 CFR Part 202

Advertising, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 202 be amended as follows:

PART 202—PRESCRIPTION DRUG ADVERTISING

1. The authority citation for 21 CFR part 202 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 352, 355, 360b, 371.

2. Section 202.1 is amended by revising paragraph (e)(1) to read as follows:

§ 202.1 Prescription-drug advertisements.

* * * * *

(e) True statement of information in brief summary relating to side effects, contraindications, and effectiveness:

(1) *When required.* All advertisements for any prescription drug ("prescription drug" as used in this section means drugs defined in section 503(b)(1) of the act and § 201.105, applicable to drugs for use by man and veterinary drugs, respectively), except advertisements described in paragraph (e)(2) of this section, must present a true statement of information in brief summary relating to side effects, contraindications (when used in this section "side effects, contraindications" include side effects, warnings, precautions, and contraindications and include any such information under such headings as cautions, special considerations, important notes, etc.), and effectiveness.

(i) *Broadcast advertisements.* Advertisements broadcast through media such as radio, television, or telephone communications systems must include information relating to the major side effects and contraindications ("major statement") of the advertised drugs in the audio or audio and visual parts of the presentation and, unless adequate provision is made for dissemination of the approved or permitted package labeling in

connection with the broadcast presentation, must contain a brief summary of all necessary information related to side effects and contraindications.

(ii) *Clear, conspicuous, and neutral manner.* Advertisements for prescription drugs intended for use by humans presented directly to consumers in television or radio format must present the major statement in a clear, conspicuous, and neutral manner. A major statement is clear, conspicuous, and neutral if:

(A) Information is presented in language that is readily understandable by consumers;

(B) Audio information is understandable in terms of the volume, articulation, and pacing used;

(C) Textual information is placed appropriately and is presented against a contrasting background for sufficient duration and in a size and style of font that allows the information to be read easily; and

(D) The advertisement does not include distracting representations (including statements, text, images, or sounds or any combination thereof) that detract from the communication of the major statement.

* * * * *

Dated: March 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6996 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510, 514, and 558

[Docket No. FDA–2010–N–0155]

Veterinary Feed Directive

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA or the agency) is announcing an advance notice of proposed rulemaking (ANPRM) to solicit comments from the public regarding potential changes to its current regulation relating to veterinary feed directive (VFD) drugs. FDA's VFD regulation, which became effective on January 8, 2001, established requirements relating to the distribution and use of VFD drugs and animal feeds containing such drugs. FDA is undertaking a review of these requirements in an effort to identify possible changes to improve efficiency. Therefore, the agency is requesting public comment on all aspects of the VFD regulation, particularly suggestions relating to improving efficiency. This information may be used to help draft a proposed rule in the near future.

DATES: Submit electronic or written comments by June 28, 2010.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2010–N–0155, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- FAX: 301–827–6870.
- Mail/Hand delivery/Courier (for paper, disk, or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the "Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Neal Bataller, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–9201, e-mail: *Neal.Bataller@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Before 1996, two options existed for regulating the distribution of animal drugs, including drugs in animal feed: (1) Over-the-counter (OTC) and (2) prescription. In 1996, Congress passed and the President signed into law the Animal Drug Availability Act (ADAA) (Public Law 104–250), to facilitate the approval and marketing of new animal drugs and medicated feeds. As part of the ADAA, Congress determined that certain new animal drugs should be approved for use in animal feed but only if these medicated feeds were administered under a veterinarian's order and professional supervision. Therefore, the ADAA created a new category of products called veterinary feed directive drugs (or VFD drugs). VFD drugs are new animal drugs intended for use in or on animal feed which are limited to use under the professional supervision of a licensed veterinarian in the course of the veterinarian's professional practice.

In the **Federal Register** of December 8, 2000 (65 FR 76924), FDA issued a final rule amending the new animal drug regulations to implement the VFD-related provisions of the ADAA. FDA reaffirmed that certain new animal drugs should be approved for use in animal feed only if these medicated feeds are administered under a veterinarian's order and professional supervision. Veterinarian oversight is important for assuring the safe and appropriate use of certain new animal drugs. For example, safety concerns relating to the difficulty of disease diagnosis, drug toxicity, drug residues, antimicrobial resistance, or other reasons may dictate that the use of a medicated feed be limited to use by order and under the supervision of a licensed veterinarian.

It has been 9 years since FDA began implementing the final rule regulating VFDs. Although, currently there are few approved VFD animal drug products, FDA has received a number of informal general comments that characterize the current VFD process as being overly burdensome. In addition, there are concerns that the process in its current form will become particularly problematic to administer in the future as the number of approved VFD animal drugs increases. When veterinary oversight of a medicated feed is determined to be necessary, it is critically important that such oversight be facilitated through an efficient VFD process. In response to these concerns, the agency is undertaking a review of the VFD regulations to determine whether changes are warranted to improve the program's efficiency.

II. Agency Request for Comments

The purpose of this document is to solicit public comment on whether such efficiency improvements are needed and, if so, on possible revisions to the VFD regulations. Such comments are welcome on all aspects of the VFD regulation. To facilitate FDA's review of

submitted comments, please organize your comments based on the major categories of requirements included in the current VFD regulation at 21 CFR 558.6. These categories of requirements are listed following this paragraph. (See A through F.) If your comment addresses an issue outside of one of these categories, please categorize your comment as G. "Other:"

A. Conditions that must be met by veterinarians issuing a VFD;

B. What veterinarians must do with a VFD (e.g., disposition of original VFD and copies);

C. Records that must be kept related to the VFDs;

D. Notification requirements for distributors of animal feeds containing a VFD drug;

E. Additional recordkeeping requirements that apply to distributors;

F. Cautionary statements required for VFD drugs and animal feeds containing VFD drugs; and

G. Other.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 24, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6872 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Parts 124, 126, and 129

[Public Notice: 6931]

RIN 1400–AC62

Amendment to the International Traffic in Arms Regulations: Removing Requirement for Prior Approval for Certain Proposals to Foreign Persons Relating to Significant Military Equipment

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to remove the requirements for prior approval or prior notification for certain proposals to foreign persons relating to significant military equipment at section 126.8 of the ITAR.

DATES: *Effective Date:* The Department of State will accept comments on this proposed rule until May 28, 2010.

ADDRESSES: Interested parties may submit comments within 60 days of the date of the publication by any of the following methods:

- *E-mail: DDTCResponseTeam@state.gov* with an appropriate subject line.
- *Mail:* Department of State, Directorate of Defense Trade Controls, Office of Defense Trade Controls Policy, ATTN: Regulatory Change, Section 126.8, SA–1, 12th Floor, Washington, DC 20522–0112.
- Persons with access to the Internet may also view this notice by going to the U.S. Government regulations.gov Web site at *http://regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Director Charles B. Shotwell, Office of Defense Trade Controls Policy, Department of State, Telephone (202) 663–2803 or Fax (202) 261–8199; E-mail *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change, Section 126.8.

SUPPLEMENTARY INFORMATION: Effective September 1, 1977, the Department of State amended the International Traffic in Arms Regulations (ITAR) at 22 CFR 123.16, to require Department of State approval before a proposal or presentation is made that is designed to constitute the basis for a decision to purchase significant combat equipment, involving the export of an item on the U.S. Munitions List, valued at $7,000,000 or more for use by the armed forces of a foreign country (42 FR 41631, dated August 18, 1977). Also, 22 CFR 124.06, entitled "Approval of proposals for technical assistance and manufacturing license agreements," was amended to require similar prior approval requirements with respect to proposals and presentations for technical assistance and manufacturing license agreements involving the production or assembly of significant combat equipment.

"Proposals to foreign persons relating to significant military equipment" became section 126.8 in a final rule effective January 1, 1985 (49 FR 47682, dated December 6, 1984). Section 126.8 did not require prior approval of the Department of State when the proposed sale was to the armed forces of a member of the North Atlantic Treaty Organization (NATO), Australia, Japan, or New Zealand, except with respect to manufacturing license agreements or technical assistance agreements.

A prior notification requirement, instead of prior approval, was added to section 126.8 in a final rule effective March 31, 1985 (50 FR 12787, dated April 1, 1985). Prior notification to the Department of State was required 30 days in advance of a proposal or presentation to any foreign person where such proposals or presentations concern equipment previously approved for export.

The current section 126.8 requires prior approval or prior notification for certain proposals and presentations to make a determination whether to purchase significant military equipment valued at $14,000,000 or more (other than a member of NATO, Australia, New Zealand, Japan, or South Korea), or whether to enter into a manufacturing license agreement or technical assistance agreement for the production or assembly of significant military equipment, regardless of dollar value.

These types of proposals and presentations usually involve large dollar amounts. Before the defense industry undertakes the effort involved in formulating its proposals and presentations, if there is any doubt that the corresponding license application or proposed agreement would not be authorized by the Department of State, the industry may request an advisory opinion (*See* 22 CFR 126.9). The written advisory opinion, though not binding on the Department, helps inform the defense industry whether the Department would likely grant a license application or proposed agreement. Currently, the time between submitting a license application or proposed agreement and obtaining a decision from the Department of State whether to authorize such transactions has been decreased sufficiently that requiring prior approval or prior notification for proposals is unnecessary and imposes an administrative burden on industry.

References to § 126.8 have been removed at §§ 124.1(a), 126.13, and 129.8(c).

Regulatory Analysis and Notices

Administrative Procedure Act

This proposed amendment involves a foreign affairs function of the United States and, therefore, is not subject to the procedures contained in 5 U.S.C. 553 and 554.

Regulatory Flexibility Act

Since this proposed amendment involves a foreign affairs function of the United States, it does not require

analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

This proposed amendment 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. Therefore, in accordance with Executive Order 13132, it is determined that this amendment does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this amendment.

Executive Order 12866

This proposed amendment is exempt from review under Executive Order 12866, but has been reviewed internally by the Department of State to ensure consistency with the purposes thereof.

Executive Order 13175

The Department of State has determined that this rulemaking will not have tribal implications, will not impose substantial direct compliance costs on Indian tribal governments, and will not preempt tribal law. Accordingly, the requirement of section 5 of Executive Order 13175 does not apply to this rulemaking.

Paperwork Reduction Act

This proposed amendment does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects

22 CFR Parts 124 and 129

Arms and munitions, Exports, Technical assistance.

22 CFR Part 126

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 124, 126, and 129 are proposed to be amended as follows:

PART 124—AGREEMENTS, OFF-SHORE PROCUREMENT AND OTHER DEFENSE SERVICES

1. The authority citation for part 124 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 2776; Pub. L. 105–261.

2. Section 124.1 is amended by revising paragraph (a) to read as follows:

§ 124.1 Manufacturing license agreements and technical assistance agreements.

(a) *Approval.* The approval of the Directorate of Defense Trade Controls must be obtained before the defense services described in § 120.9(a) of this subchapter may be furnished. In order to obtain such approval, the U.S. person must submit a proposed agreement to the Directorate of Defense Trade Controls. Such agreements are generally characterized as manufacturing license agreements, technical assistance agreements, distribution agreements, or off-shore procurement agreements, and may not enter into force without the prior written approval of the Directorate of Defense Trade Controls. Once approved, the defense services described in the agreements may generally be provided without further licensing in accordance with §§ 124.3 and 125.4(b)(2) of this subchapter. The requirements of this section apply whether or not technical data is to be disclosed or used in the performance of the defense services described in § 120.9(a) of this subchapter (e.g., all the information relied upon by the U.S. person in performing the defense service is in the public domain or is otherwise exempt from licensing requirements of this subchapter pursuant to § 125.4 of this subchapter). This requirement also applies to the training of any foreign military forces, regular and irregular, in the use of defense articles. Technical assistance agreements must be submitted in such cases. In exceptional cases, the Directorate of Defense Trade Controls, upon written request, will consider approving the provision of defense services described in § 120.9(a) of this subchapter by granting a license under part 125 of this subchapter.

* * * * *

PART 126—GENERAL POLICIES AND PROVISIONS

3. The authority citation for part 126 continues to read as follows:

Authority: Secs. 2, 38, 40, 42 and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791 and 2797); E.O. 11958, 42 FR 4311; 3 CFR, 1977 Comp., p. 79; 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375.

§ 126.8 [Removed and Reserved]

4. Section 126.8 is removed and reserved.

5. Section 126.13 is amended by revising paragraph (a) to read as follows:

§ 126.13 Required information.

(a) All applications for licenses (DSP–5, DSP–61, DSP–73, and DSP–85), all requests for approval of agreements and amendments thereto under part 124 of this subchapter, and all requests for written authorizations must include a letter signed by a responsible official empowered by the applicant and addressed to the Directorate of Defense Trade Controls, stating whether:

* * * * *

PART 129—REGISTRATION AND LICENSING OF BROKERS

6. The authority citation for part 129 is revised to read as follows:

Authority: Sec. 38, Pub. L. 104–164, 110 Stat. 1437, (22 U.S.C. 2778).

§ 129.8 [Amended]

7. Section 129.8 is amended by removing paragraph (c).

Dated: March 3, 2010.

Ellen O. Tauscher,

Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2010–6905 Filed 3–26–10; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR CHAPTER VI

No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee Meeting

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Affairs is announcing that the No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee will hold its second meeting in Seattle, Washington. The purpose of the meeting is to continue negotiations to prepare a report or reports regarding Bureau-funded school facilities as required under the No Child Left Behind Act of 2001.

DATES: The Committee's second meeting will begin at 8:30 a.m. on April 12, 2010, and end at 12 p.m. on April 15, 2010.

ADDRESSES: The meeting will be held at the Hilton Seattle Airport and Conference Center, 17620 International Blvd., Seattle, Washington 98188–4001.

FOR FURTHER INFORMATION CONTACT: The Designated Federal Official, Michele F. Singer, Director, Office of Regulatory Affairs and Collaborative Action, Office of the Assistant Secretary—Indian Affairs, 1001 Indian School Road, NW., Suite 312, Albuquerque, NM 87104; telephone (505) 563–3805; fax (505) 563–3811.

SUPPLEMENTARY INFORMATION: The No Child Left Behind School Facilities and Construction Negotiated Rulemaking Committee was established to prepare and submit a report or reports to the Secretary of the Interior setting out: a method for creating a catalog of school facilities; a list of school replacement and new construction needs of the interested parties and a formula for equitable distribution of funds to address those needs; a list of major and minor renovation needs of the interested parties and a formula for equitable distribution of funds to address those needs; and facilities standards for home-living (dormitory) situations.

The following items will be on the agenda:

- Review of Committee Operating Procedures, discussion, and approval;
- Review of Committee criteria for decision-making developed in the visioning exercise in January 2010;
- Overview, review, and discussion of key formulas from the FMIS March 2010 Training;
- Small group and subcommittee work: Dormitory Standards, Catalogue/Inventory, and Formula for Repair and Renovation;
- Report back from subcommittee work and discussion;
- Discussion of programmatic requirements and facility issues;
- Discussion of report outline;
- Discussion of formula and approach to new school construction;
- Refinement of options for catalogue and tentative consensus;
- Finalization of subcommittees, logistics, next steps, and other details;
- Assessment of the second meeting; and
- Public comments.

Written comments may be sent to the Designated Federal Official listed in the **FOR FURTHER INFORMATION CONTACT** section above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: March 22, 2010.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2010–7061 Filed 3–26–10; 8:45 am]

BILLING CODE 4310–W7–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

Gap in Termination Provisions; Inquiry

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of public inquiry; request for comments.

SUMMARY: The Copyright Office is seeking comments regarding the application of Title 17 to the termination of certain grants of transfers or licenses of copyright, specifically those for which execution of the grant occurred prior to January 1, 1978 and creation of the work occurred on or after January 1, 1978. The Copyright Office is seeking comments at this time because the deadlines for serving notices of termination for 1978 grants will begin to expire in 2011 and some stakeholders have raised questions with the Office and some Congressional Offices.

DATES: Initial comments on the Notice of Inquiry and Requests for Comments are due on or before April 30, 2010. Reply comments are due on or before May 14, 2010.

ADDRESSES: The Copyright Office strongly prefers that comments be submitted electronically. A comment page containing a comment form is posted on the Copyright Office Web site at *http://www.copyright.gov/docs/termination.* The Web site interface requires submitters to complete a form specifying name and organization, as applicable, and to upload comments as an attachment via a browse button. To meet accessibility standards, all comments must be uploaded in a single file in either the Adobe Portable Document File (PDF) format that contains searchable, *accessible* text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). The maximum file size is 6 megabytes (MB). The name of the submitter and organization should appear on both the form and the face of the comments. All comments will be posted publicly on the Copyright Office Web site exactly as they are received, along with names and organizations. If electronic submission of comments is not feasible, please contact the Copyright Office at 202–707–1027 for special instructions.

FOR FURTHER INFORMATION CONTACT: Maria Pallante, Associate Register, Policy and International Affairs, by telephone at 202–707–1027 or by electronic mail at *mpall@loc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Copyright Act gives authors (and some heirs, beneficiaries and representatives who are specified by statute) the right to terminate certain grants of transfers or licenses, subject to the passage of time set forth in the statute and the execution of certain conditions precedent.

Termination rights (also referred to as "recapture rights") are equitable accommodations under the law. They allow authors or their heirs a second opportunity to share in the economic success of their works. Codified in sections 304(c), 304(d) and 203 of Title 17, respectively, they encompass grants made before as well as after January 1, 1978 (the effective date of the 1976 Copyright Act). (The provisions do not apply to copyrights in works made for hire or grants made by will.)

This inquiry concerns a narrow set of facts that some authors and their representatives have brought to the attention of the Copyright Office and some Congressional Offices. Specifically, the Office is interested in whether or how the termination provisions apply in circumstances where the grant was executed prior to January 1, 1978, but the work was created on or after January 1, 1978. For such works, there appears to be some confusion and possible disagreement among some stakeholders as to whether termination rights are exercisable in the first place and, if they are, which statutory provision applies. In seeking comments, the Office is aware that termination rights may only be exercised during the window of time specified by statute and the deadlines

for grants made in 1978 will begin to expire next year.

Termination provisions provide authors with a long-term insurance policy on the value of their copyrights. The House Report accompanying the 1976 Copyright Act states that the provisions are "needed because of the unequal bargaining position of authors, resulting in part from the impossibility of determining a work's value until it has been exploited." H.R. Rep. No. 94–1476, at 124 (1976). Termination rights are put in motion by serving notice on the grantee. The notice must state the effective date of the termination and must be served on the grantee not less than two or more than ten years before that date. 17 U.S.C. 304(c)(4)(A); 304(d)(1); 203(a)(4)(A). The Register of Copyrights, through regulations, has set forth additional core elements that must be included in the notice, among them a statement as to whether termination is being made under section 304(c), 304(d) or 203. 37 CFR 201.10(b)(1)(i) and (b)(2)(ii).

Section 304 (c) governs older works, specifically works in which a copyright was subsisting in its first or renewal term as of January 1, 1978. It provides for termination of the exclusive or nonexclusive grant of a transfer or license of the renewal copyright (or any right under it) executed before January 1, 1978. Termination may be exercised at any time during a five-year period beginning at the end of fifty-six years from the date copyright was originally secured. Section 304(d) governs a smaller subset of pre-78 works for which the termination right under section 304(c) expired (and was not exercised) on or before the effective date (October 27, 1998) of the "Sonny Bono Copyright Term Extension Act," which extended copyright terms by 20 years. It provides for termination of the exclusive or nonexclusive grant of a transfer or license of the renewal copyright (or any right under it) at any time during a five-year period beginning at the end of 75 years from the date copyright was originally secured.

Section 203 governs grants made under the "new law." It provides for termination of the exclusive or nonexclusive grant of copyright (or any right under copyright) executed on or after January 1, 1978 (regardless of whether the copyright was secured prior to or after 1978). Termination may be exercised at any time during a period of five years beginning at the end of thirty-five years from the date of publication of the work under the grant or at the end of forty years from the date of execution of the grant, whichever is earlier. Unlike section 304, the termination right in section 203 applies only to grants executed by authors. Section 203 terminations may be exercised as of January 1, 2013, provided notice has been served no less than two years prior.

Once the notice is served, a copy of the notice must be recorded with the Copyright Office prior to the effective date of termination. 17 U.S.C. 304(c)(4)(A); 304(d)(1); 203(a)(4)(A). Upon receipt of the notice, the Copyright Office undertakes a review of certain facts, including whether the notice has been executed in a timely manner. Because lateness is a fatal mistake [1] under the law, the Office reserves the right to refuse recordation of a notice of termination if, in the judgment of the Office, such notice of termination is untimely.[2] 37 CFR 201.10(f)(4).

Subject of Inquiry

The Copyright Office seeks comment on the question of whether and how Title 17 provides a termination right to authors (and other persons specified by statute) when the grant was made prior to 1978 and the work was created on or after January 1, 1978. For purposes of illustration, please note the following examples:

Example 1: A composer signed an agreement with a music publisher in 1977 transferring the copyrights to future musical compositions pursuant to a negotiated fee schedule. She created numerous compositions under the agreement between 1978 and 1983, some of which were subsequently published by the publisher-transferee. Several of these achieved immediate popular success and have been economically viable ever since. The original contract has not been amended or superseded.

Example 2: A writer signed an agreement with a book publisher in 1977 to deliver a work of nonfiction. The work was completed and delivered on time in 1979 and was published in 1980. The book's initial print run sold out slowly, but because the author's subsequent works were critically acclaimed, it was released with an updated cover last year and is now a best seller. The rights remained with the publisher all along and the original royalty structure continues to apply.

[1] By contrast, the regulations provide accommodations for certain harmless errors. 37 CFR 201.10(e)(1)–(2).

[2] If a document is submitted as a notice of termination after the statutory deadline has expired, the Office will offer to record the document as a "document pertaining to copyright" pursuant to § 201.4(c)(3), but the Office will not index the document as a notice of termination. Whether a document so recorded is sufficient in any instance to effect termination as a matter of law shall be determined by a court of competent jurisdiction.

Questions

In order to better understand the application of sections 304(c), 304(d) and 203 to the grants of transfers and licenses discussed above, the Copyright Office seeks comments as follows:

A. Experience. Please describe any experience you have in exercising or negotiating termination rights for pre-1978 grants of transfers or licenses for works that were created on or after January 1, 1978.

B. Interpretation. Are the grants of transfers or licenses discussed above terminable under Title 17 as currently codified? If so, under which provision? What is the basis for your determination? Are there state or federal laws other than copyright that are relevant? Is delivery of the work by the grantor to the grantee relevant to the question of termination? Is publication relevant?

C. Recommendations. Do you have any recommendations with respect to the grants of transfers or licenses illustrated above?

D. Other Issues. Are there other issues with respect to the application or exercise of termination provisions that you would like to bring to our attention for future consideration?

Dated: March 24, 2010.

Marybeth Peters,

Register of Copyrights, U.S. Copyright Office.

[FR Doc. 2010–6936 Filed 3–26–10; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R06–OAR–2007–0526; FRL–9130–9]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revision to Control Volatile Organic Compound Emissions in the Houston/Galveston/Brazoria 8-Hour Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Texas State Implementation Plan (SIP). The revision adds additional requirements to control volatile organic compound (VOC) emissions from storage tanks, transport vessels and marine vessels in the Houston/Galveston/Brazoria (HGB) 1997 8-hour ozone nonattainment area, which consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty,

Montgomery and Waller counties. Specifically, this revision subjects owners or operators of VOC storage tanks, transport vessels, and marine vessels located in the HGB 1997 8-hour ozone nonattainment area to more stringent control, monitoring, and recordkeeping requirements. EPA proposes to approve the SIP revision because it will help lower ozone levels in the HGB area by reducing VOC emissions. EPA proposes to approve the revision pursuant to section 110 and part D of the Clean Air Act (CAA).

DATES: Written comments must be received on or before April 28, 2010.

ADDRESSES: Comments may be mailed to Mr. Guy Donaldson, Chief, Air Planning Section (6PD–L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carl Young, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733, telephone 214–665–6645; fax number 214–665–7263; e-mail address *young.carl@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct rule without prior proposal because the Agency views this as noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: March 12, 2010.

Al Armendariz,

Regional Administrator, Region 6.

[FR Doc. 2010–6794 Filed 3–26–10; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 06–154; FCC 10–21]

Satellite License Procedures

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the *Notice of Proposed Rulemaking* (Notice), the Commission invites comment on several revisions to its satellite and earth station licensing rules. The intended purpose of this proceeding is to clarify and update satellite and earth station licensing requirements.

DATES: Comments are due on or before April 28, 2010. Reply comments are due on or before May 13, 2010.

ADDRESSES: You may submit comments, identified by IB Docket No. 06–154, by any of the following methods:

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th Street, SW., Room TW–A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice) or 202–418–0432 (TTY). Contact the FCC to request reasonable accommodations for filing comments (accessible format documents, sign language interpreters, CART, etc.) by e-mail at: *FCC504@fcc.gov;* phone: 202–418–0530 or TTY: 202–418–0432.

FOR FURTHER INFORMATION CONTACT: William Bell, Satellite Division, International Bureau, (202) 418–0741.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking,* adopted January 21, 2010 and released January 26, 2010. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. It is also available on the Commission's Web site at *http://www.fcc.gov.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* (63 FR 2421 (May 1, 1998)). Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov,* and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number.

Paperwork Reduction Act: The *Notice* does not contain any proposed new or modified information collection(s).

Summary of Further Notice of Proposed Rulemaking: In the *Notice,* the Commission proposes a number of revisions to part 25 to eliminate provisions that are no longer needed. For example, it proposes to amend section 25.201, which defines technical terms for purposes of part 25, by deleting definitions of terms that do not appear anywhere else in part 25. It also proposes to amend several rule provisions in order to eliminate redundant or superfluous text. In addition to eliminating rules that are no longer needed, the Commission seeks to clarify a number of provisions in part 25 to make those requirements easier for

applicants and licensees to understand. The Commission also proposes to amend a number of rule to delete or correct outdated information and cross-references in part 25. The Commission further proposes changes in a number of rule provisions to correct grammatical, spelling, or typographical errors. Finally, the Commission also invites commenters to make additional proposals and suggestions for streamlining and clarifying part 25.

Initial Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA) [1] requires that a regulatory flexibility analysis be prepared for rulemaking proceedings unless the agency certifies that "the rule will not have a significant economic impact on a substantial number of small entities." [2] The RFA generally defines the term "small entity" as referring to any "small business," "small organization," or "small governmental jurisdiction." [3] The term "small business" has the same meaning as the term "small business concern" under the Small Business Act.[4] A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).[5] A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." [6] "Small governmental jurisdiction" generally means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.[7]

In this *Notice,* the Commission proposes to amend various provisions of its rules pertaining to the licensing and/or operation of radio stations used for telecommunication via satellite. The objectives of the proposed rule changes are to make the rules in question more concise, more coherent, and/or more lucid without changing or eliminating existing regulatory requirements. We certify that adoption of these proposed rule changes would not have a significant economic impact on a substantial number of small entities.

The Commission will send a copy of the *Notice,* including a copy of this certification, in a report to Congress pursuant to the Congressional Review Act.[8] In addition, the *Notice* and this certification will be sent to the Chief Counsel for Advocacy of the Small Business Administration, and will be published in the **Federal Register.**[9]

Ordering Clauses

Accordingly, *it is ordered,* pursuant to sections 4(i), 7(a), 11, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 157(a), 161, 303(c), 303(f), 303(g), 303(r), that this Notice of Proposed Rulemaking in IB Docket No. 06–154 is hereby *adopted.*

It is further ordered that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center shall send a copy of this Notice of Proposed Rulemaking, including the initial regulatory flexibility act certification, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with section 603(a) of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (1981).

List of Subjects in 47 CFR Part 25

Satellites.

Federal Communications Commission.

Bulah P. Wheeler,

Acting Associate Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 25 of the Code of Federal Regulations as follows:

PART 25—SATELLITE COMMUNICATIONS

1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309, and 332 of the Communications Act, as amended, 47 U.S.C. Sections 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

§ 25.103 [Amended]

2. In § 25.103, remove and reserve paragraphs (a) through (f).

3. Revise § 25.109 to read as follows:

§ 25.109 Cross-reference.

(a) Space radiocommunications stations in the following services are not licensed under this part:

(1) For licensing requirements for the Amateur Satellite Service, *see* part 97 of this chapter, but Amateur Satellite Operators must comply with § 25.111(b);

(2) Ship earth stations in the Maritime Mobile Satellite Service, *see* 47 CFR part 80;

(3) Aircraft earth stations in the Aeronautical Mobile Satellite Service, *see* 47 CFR part 87.

(b) All space station and earth station operators must comply with the applicable provisions of the Table of Frequency Allocations, in § 2.106 of this chapter.

(c) All earth station operators must comply with the applicable provisions of part 1, subpart I of this chapter.

(d) All earth station operators must comply with the applicable provisions of part 17 of this chapter.

4. In § 25.110, revise paragraphs (a) and (c) to read as follows:

§ 25.110 Filing of applications, fees, and number of copies.

(a) Applications shall be filed by going online at *http://www.fcc.gov/ibfs* and submitting the application through the International Bureau Filing System (IBFS).

* * * * *

(c) All correspondence concerning any application must identify:

(1) The applicant's name,

(2) The call sign of the space station or earth station, and

(3) The file number of the application.

* * * * *

5. In § 25.111, revise paragraph (c) to read as follows:

§ 25.111 Additional information.

* * * * *

(c) In the Direct Broadcast Satellite service, applicants and licensees shall also provide the Commission with all information it requires in order to modify the plans for the Broadcasting-Satellite Service (BSS) in Appendix 30 of the ITU Radio Regulations (RR) and associated feeder-link plans in Appendix 30A of the ITU Radio Regulations (RR), if the system has technical characteristics differing from those specified in the Appendix 30 BSS Plans, the Appendix 30A feederlink Plans, Annex 5 to Appendix 30, or Annex 3 to Appendix 30A. For such

[1] The RFA, *see* 5 U.S.C. 601 *et seq.,* has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] 5 U.S.C. 605(b).

[3] *Id.* § 601(6).

[4] 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies "unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after the opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." 5 U.S.C. 601(3).

[5] Small Business Act, 15 U.S.C. 632 (1996).

[6] 5 U.S.C. 601(4).

[7] 5 U.S.C. 601(5).

[8] 5 U.S.C. 801(a)(1)(A).

[9] *See* 5 U.S.C. 605(b).

systems, no protection from interference caused by radio stations authorized by other Administrations is guaranteed until the agreement of all affected Administrations is obtained and the frequency assignment becomes a part of the appropriate Region 2 BSS and feeder-link Plans. Authorizations for which coordination is not completed and/or for which the necessary agreements under Appendices 30 and 30A have not been obtained may be subject to additional terms and conditions as required to effect coordination or obtain the agreement of other Administrations. Applicants and licensees shall also provide the Commission with the information required by Appendix 4 of the ITU Radio Regulations (RR) for advance publication and notification or coordination of the frequencies to be used for tracking, telemetry and control functions of DBS systems.

6. In § 25.113, revise paragraph (a) and remove and reserve paragraph (c) to read as follows:

§ 25.113 Station licenses and launch authority.

(a) Construction permits are not required for earth stations. Construction of such stations may commence prior to grant of a license at the applicant's own risk. Applicants must comply with the provisions of 47 CFR 1.1312 relating to environmental processing prior to commencing construction.

* * * * *

7. Amend § 25.115 by revising paragraph (a)(2), removing paragraph (a)(3), redesignating paragraph (a)(4) as paragraph (a)(3), and by revising newly designated paragraph (a)(3) to read as follows:

§ 25.115 Application for earth station authorizations.

(a) * * *

(2) Applicants for licenses for transmitting earth station facilities are required to file Form 312EZ in the following cases:

(i) The earth station will operate in the 3700–4200 MHz and 5925–6425 MHz bands and/or in the 11.7–12.2 GHz and 14.0–14.5 GHz bands; and

(ii) The earth station will meet all the applicable technical specifications set forth in part 25.

(iii) The earth station is not an ESV.

(3) Applications for earth station authorizations must be filed in accordance with the pleading limitations, periods and other applicable provisions of §§ 1.41 through 1.52 of this chapter, except that such earth station applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter;

* * * * *

8. In § 25.116, revise paragraph (e) to read as follows:

§ 25.116 Amendments to applications.

* * * * *

(e) Any amendment to an application shall be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter. Amendments to space station applications must be filed on Form 312 and Schedule S. Amendments to earth station applications must be filed on Form 312 and Schedule B.

9. Amend § 25.117 by adding paragraphs (b) and (e), and revising paragraph (c) to read as follows:

§ 25.117 Modification of station licenses.

* * * * *

(b) Both earth station and space station modification applications must be filed electronically through the International Bureau Filing System (IBFS) in accordance with the applicable provisions of part 1, subpart Y of this chapter.

(c) Applications for modification of earth station authorizations shall be submitted on FCC Form 312, Main Form and Schedule B, but only those items that change need to be specified, provided that the applicant certifies that the remaining information has not changed.

* * * * *

(e) Any application for modification of authorization to extend a required date of completion, as set forth in § 25.133 for earth station authorizations or § 25.164 for space stations, or included as a condition of any earth station or space station authorization, must include a verified statement from the applicant:

(1) That states that the additional time is required due to unforeseeable circumstances beyond the applicant's control, describes these circumstances with specificity, and justifies the precise extension period requested; or

(2) That states there are unique and overriding public interest concerns that justify an extension, identifies these interests and justifies a precise extension period.

* * * * *

10. In § 25.119, revise paragraph (b)(2) to read as follows:

§ 25.119 Assignment or transfer of control of station authorization.

* * * * *

(b) * * *

(2) Effect any change in a controlling interest in the ownership of the licensee, including changes in legal or equitable ownership.

* * * * *

11. Amend § 25.134 by revising the section heading and paragraph (h), and by removing and reserving paragraph (d), to read as follows:

§ 25.134 Licensing provisions for Very Small Aperture Terminal (VSAT) and C-band Small Aperture Terminal (CSAT) networks.

* * * * *

(h) VSAT operators licensed pursuant to this section are prohibited from using remote earth stations in their networks that are not designed to stop transmission when synchronization with the signal received from the target satellite fails.

12. In § 25.137, revise paragraphs (b), (c), and (e) to read as follows:

§ 25.137 Application requirements for earth stations operating with non-U.S. licensed space stations.

* * * * *

(b) Earth station applicants, or entities filing a "letter of intent" or "Petition for Declaratory Ruling," requesting authority to operate with a non-U.S.-licensed space station must attach to their FCC Form 312 exhibits providing legal and technical information for the non-U.S.-licensed space station in accordance with part 25, including but not limited to Schedule S. Such applications, letters, or petitions must be filed electronically through the International Bureau Filing System.

(c) A non-U.S.-licensed NGSO-like satellite system seeking to serve the United States can be considered contemporaneously with other U.S. NGSO-like satellite systems pursuant to § 25.157 and considered before later-filed applications of other U.S. satellite system operators, and a non-U.S.-licensed GSO-like satellite system seeking to serve the United States can have its request placed in a queue pursuant to § 25.158 and considered before later-filed applications of other U.S. satellite system operators, if the non-U.S.-licensed satellite system:

(1) Is in orbit and operating;

(2) Has a license from another administration; or

(3) Has been submitted for coordination to the International Telecommunication Union.

* * * * *

(e) A non-U.S.-licensed satellite operator that is seeking to serve the United States pursuant to a Letter of Intent may amend its request by submitting an additional Letter of

Intent. Such additional Letters of Intent will be treated on the same basis as amendments filed by U.S. space station applicants for purposes of determining the order in which the Letters of Intent will be considered relative to other pending applications.

* * * * *

13. In § 25.140, revise the section heading and paragraph (a) to read as follows:

§ 25.140 Qualifications of Fixed Satellite Service and 17/24 GHz broadcasting-satellite service space station licensees.

(a) License applications for new fixed-satellite space stations shall comply with the requirements established in Report and Order, CC Docket No. 81–704 (available at the address in § 0.445 of this chapter). Such applications must also meet the requirements in paragraph (b) of this section. The Commission may require additional or different information in the case of any individual application. Applications will be unacceptable for filing and will be returned to the applicant if they do not meet the requirements referred to in this paragraph.

* * * * *

14. In § 25.142, revise paragraphs (a)(2) and (b)(2)(ii) to read as follows:

§ 25.142 Licensing provisions for the non-voice, non-geostationary Mobile Satellite Service.

(a) * * *

(2) Applicants for a non-voice, non-geostationary Mobile Satellite space station license must identify the power flux density produced at the Earth's surface by each space station of their system in the 137–138 MHz and 400.15–401 MHz frequency bands, to allow determination of whether coordination with terrestrial services is required under any applicable footnote to the Table of Frequency Allocations in § 2.106 of this chapter. In addition, applicants must identify the measures they would employ to protect the radio astronomy service in the 150.05–153 MHz and 406.1–410 MHz bands from harmful interference from unwanted emissions.

* * * * *

(b) * * *

(2) * * *

(ii) The Commission will use its existing procedures for liaison with NTIA to reach agreement with respect to achieving compatible operations between Federal Government users under the jurisdiction of NTIA and non-voice, non-geostationary Mobile Satellite Service systems (including user transceivers subject to blanket licensing under § 25.115(d)) through the frequency assignment and coordination practices established by NTIA and the Interdepartment Radio Advisory Committee (IRAC). In order to facilitate such frequency assignment and coordination, applicants shall provide the Commission with sufficient information to evaluate electromagnetic compatibility with the Federal Government use of the spectrum, and any additional information requested by the Commission. As part of the coordination process, applicants shall show that they will not cause unacceptable interference to authorized Federal Government users, based upon existing system information provided by the government. The frequency assignment and coordination of the satellite system with Federal Government users shall be completed prior to grant of authorization.

* * * * *

15. In § 25.143, revise paragraph (e)(1)(iii) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz Mobile Satellite Service and 2 GHz Mobile Satellite Service.

* * * * *

(e) * * *

(1) * * *

(iii) A detailed description of the use made of the in-orbit satellite system. That description should identify the percentage of time that the system is actually used for U.S. domestic transmission, the amount of capacity (if any) sold but not in service within U.S. territorial geographic areas, and the amount of unused system capacity. 2 GHz Mobile Satellite systems receiving expansion spectrum as part of the unserved areas spectrum incentive must provide a report on the actual number of subscriber minutes originating or terminating in unserved areas as a percentage of the actual U.S. system use; and

* * * * *

16. In § 25.145, revise paragraph (c)(1) to read as follows:

§ 25.145 Licensing conditions for the Fixed Satellite Service in the 20/30 GHz bands.

* * * * *

(c) * * *

(1) That the proposed system is capable of providing Fixed Satellite Services to all locations as far north as 70° North Latitude and as far south as 55° South Latitude for at least 75% of every 24-hour period; and

* * * * *

17. In § 25.146, revise the section heading; paragraphs (a)(1)(i), (a)(1)(iii), (a)(2)(i), and (a)(2)(iii); the introductory text to paragraph (b); and paragraphs (b)(1)(i), (b)(1)(iii), (e), (i)(2), and (i)(3) to read as follows:

§ 25.146 Licensing and operating rules for the non-geostationary satellite orbit Fixed Satellite Service (NGSO FSS) in the 10.7 GHz to 14.5 GHz bands.

(a) * * *

(1) * * *

(i) Provide a set of power flux density (PFD) masks, on the surface of the Earth, for each space station in the NGSO FSS system. The PFD masks shall be generated in accordance with the specification stipulated in the most recent version of ITU–R Recommendation BO.1503, "Functional Description to be used in Developing Software Tools for Determining Conformity of Non-GSO FSS Networks with Limits Contained in Article 22 of the Radio Regulations." In particular, the PFD masks must encompass the power flux density radiated by the space station regardless of the satellite transmitter power resource allocation and traffic/beam switching strategy that are used at different periods of an NGSO FSS system's life. The PFD masks shall be in an electronic form that can be accessed by the computer program specified in paragraph (a)(1)(iii) of this section.

* * * * *

(iii) If a computer program that has been approved by the ITU for determining compliance with the single-entry $EPFD_{down}$ validation limits is not yet available, the applicant shall provide a computer program for the single-entry $EPFD_{down}$ validation computation, including both the source code and the executable file. This computer program shall be developed in accordance with the specification stipulated in the most recent version of Recommendation ITU–R S.1503. If the applicant uses the ITU approved software, the applicant shall indicate the program name and the version used.

* * * * *

(2) * * *

(i) Provide a set of NGSO FSS earth station maximum equivalent isotropically radiated power (EIRP) masks as a function of the off-axis angle generated by an NGSO FSS earth station. The maximum EIRP mask shall be generated in accordance with the specification stipulated in the most recent version of ITU–R Recommendation BO.1503. In particular, the results of calculations encompass what would be radiated regardless of the earth station transmitter power resource allocation and traffic/beam switching strategy are used at different periods of an NGSO FSS system's life. The EIRP masks shall

be in an electronic form that can be accessed by the computer program specified in paragraph (a)(2)(iii) of this section.

* * * * *

(iii) If a computer program that has been approved by the ITU for determining compliance with the single-entry $EPFD_{up}$ validation limits is not yet available, the applicant shall provide a computer program for the single-entry $EPFD_{up}$ validation computation, including both the source code and the executable file. This computer program shall be developed in accordance with the specification stipulated in the most recent version of Recommendation ITU–R S.1503. If the applicant uses the ITU approved software, the applicant shall indicate the program name and the version used.

* * * * *

(b) Ninety days prior to the initiation of service to the public, the NGSO FSS system licensee shall submit a comprehensive technical showing for the non-geostationary satellite orbit Fixed Satellite Service (NGSO FSS) system in the 10.7 GHz to 14.5 GHz bands. The technical information shall demonstrate that the NGSO FSS system is expected not to operate in excess of the additional operational $EPFD_{down}$ limits and the operational $EPFD_{down}$ limits as specified in § 25.208(i) and (j), and notes 2 and 3 to Table 1L in § 25.208(l). If the technical demonstration exceeds the additional operational $EPFD_{down}$ limits or the operational $EPFD_{down}$ limits at any test points with the United States for domestic service and at any test points out side of the United States for international service, the NGSO FSS system licensee shall not initiate service to the public until the deficiency has been rectified by reducing satellite transmission power or other adjustments. This must be substantiated by subsequent technical showings. The technical showings consist of the following:

(1) * * *

(i) Provide a set of anticipated operational power flux density (PFD) masks, on the surface of the Earth, for each space station in the NGSO FSS system. The anticipated operational PFD masks could be generated by using the method specified in the most recent version of ITU–R Recommendation BO.1503. In particular, the anticipated operational PFD mask shall take into account the expected maximum traffic loading distributions and geographic specific scheduling of the actual measured space station antenna patterns (*see* § 25.210(k)). The anticipated operational PFD masks shall also be in an electronic form that can be accessed by the computer program contained in paragraph (b)(1)(iii) of this section.

* * * * *

(iii) Provide a computer program for the single-entry additional operational $EPFD_{down}$ verification computation, including both the source code and the executable file. This computer program could be developed by using the method specified in the most recent version of ITU–R Recommendation BO.1503.

* * * * *

(e) An NGSO FSS system licensee operating a system in compliance with the limits specified in § 25.208 (g), (i), (j), (k), (l), and (m) shall be considered as having fulfilled its obligations under ITU Radio Regulations Article 22.2 with respect to any GSO network. However, such NGSO FSS system shall not claim protection from GSO FSS and BSS networks operating in accordance with part 25 and the ITU Radio Regulations.

* * * * *

(i) * * *

(2) A demonstration that the proposed system is capable of providing Fixed Satellite Services to all locations as far north as 70° North Latitude and as far south as 55° South Latitude for at least 75 percent of every 24-hour period; and

(3) Sufficient information on the NGSO FSS system characteristics to properly model the system in computer sharing simulations, including, at a minimum, NGSO hand-over and satellite switching strategies, NGSO satellite antenna gain patterns, and NGSO earth station antenna gain patterns. In particular, each NGSO FSS applicant must explain the switching protocols it uses to avoid transmitting while passing through the geostationary satellite orbit arc, or provide an explanation as to how the PFD limits in § 25.208 are met without using geostationary satellite orbit arc avoidance. In addition, each NGSO FSS applicant must provide the orbital parameters contained in section A.4 of Annex 2A to Appendix 4 of the ITU Radio Regulations (2008). Further, each NGSO FSS applicant must provide a sufficient technical showing to demonstrate that the proposed non-geostationary satellite orbit system meets the PFD limits contained in § 25.208, as applicable, and

* * * * *

18. Revise § 25.150 to read as follows:

§ 25.150 Receipt of applications.

Applications received by the Commission are given a file number and a unique station identifier for administrative convenience. Neither the assignment of a file number and/or other identifier nor the listing of the application on public notice as received for filing indicates that the application has been found acceptable for filing or precludes subsequent return or dismissal of the application if it is found to be defective or not in accordance with the Commission's rules.

19. Amend § 25.201 as follows:

a. Remove the definitions "*Active satellite*," "*Base earth station*," "*Passive satellite*," "*Space operation service*," "*Space telecommand*," "*Space telemetering*," "*Space tracking*," and "*Structural attenuation*";

b. Revise the definitions of "*Equivalent power flux density*," "*Fixed earth station*," "*Fixed Satellite Service,*" "*2 GHz Mobile Satellite Service*," "*Mobile Satellite Service*," "*Power spectral density*," "*Protection areas*," and "*Routine processing or licensing*."

c. Add definitions of "*Feeder link*," "*Mobile earth terminal*," and "*1.5/1.6 GHz Mobile Satellite Service*" in numerical and alphabetical order.

The additions and revisions read as follows:

§ 25.201 Definitions.

1.5/1.6 GHz Mobile Satellite Service. Mobile Satellite Service provided in any portions of the 1525–1559 MHz downlink band and the 1626.5–1660.5 MHz uplink band, which are referred to in this rule part as the "1.5/1.6 GHz MSS bands."

2 GHz Mobile Satellite Service. A Mobile Satellite Service that is operated in the 2000–2020 MHz and 2180–2200 MHz frequency bands, or in any portion thereof.

* * * * *

Equivalent power flux density. Equivalent power flux density (EPFD) is the sum of the power flux-densities produced at a geostationary satellite orbit (GSO) receive earth or space station on the Earth's surface or in the geostationary satellite orbit, as appropriate, by all the transmit stations within a non-geostationary satellite orbit Fixed Satellite Service (NGSO FSS) system, taking into account the off-axis discrimination of a reference receiving antenna assumed to be pointing in its nominal direction. The equivalent power flux density, in $dB(W/m^2)$ in the reference bandwidth, is calculated using the following formula:

$$EPFD = 10 \cdot \log_{10}\left[\sum_{i=1}^{N_a} 10^{\frac{P_i}{10}} \cdot \frac{G_t(\theta_i)}{4.\pi d_i^2} \cdot \frac{G_r(\phi_i)}{G_{r,\max}}\right]$$

Where:

N_a is the number of transmit stations in the non-geostationary satellite orbit system that are visible from the GSO receive station considered on the Earth's surface or in the geostationary satellite orbit, as appropriate;

i is the index of the transmit station considered in the non-geostationary satellite orbit system;

P_i is the RF power at the input of the antenna of the transmit station, considered in the non-geostationary satellite orbit system in dBW in the reference bandwidth;

θ_i is the off-axis angle between the boresight of the transmit station considered in the non-geostationary satellite orbit system and the direction of the GSO receive station;

$G_t(\theta_i)$ is the transmit antenna gain (as a ratio) of the station considered in the non-geostationary satellite orbit system in the direction of the GSO receive station;

d_i is the distance in meters between the transmit station considered in the non-geostationary satellite orbit system and the GSO receive station;

Φ_i is the off-axis angle between the boresight of the antenna of the GSO receive station and the direction of the ith transmit station considered in the non-geostationary satellite orbit system;

$G_r(\Phi_i)$ is the receive antenna gain (as a ratio) of the GSO receive station in the direction of the ith transmit station considered in the non-geostationary satellite orbit system;

$G_{r,\max}$ is the maximum gain (as a ratio) of the antenna of the GSO receive station.

Feeder link. A radio link from a fixed earth station to a space station, or vice versa, conveying information for a space radio-communication service other than the Fixed Satellite Service.

Fixed earth station. An earth station intended to be used at a fixed position. The position may be a specified fixed point or any fixed point within a specified area.

Fixed Satellite Service. A radiocommunication service between fixed earth stations when one or more satellites are used. The Fixed Satellite Service also includes feeder links for other space radiocommunication services.

* * * * *

Mobile Earth Terminal (MET). Mobile earth station.

Mobile Satellite Service (MSS). A radiocommunication service:

(1) Between mobile earth stations and one or more space stations, or between space stations used by this service; or

(2) Between mobile earth stations, by means of one or more space stations. (RR)

* * * * *

Power spectral density. The amount of an emission's transmitted carrier power applied at the antenna input falling within the stated bandwidth. The units of power spectral density are watts per hertz and are generally expressed in decibel form as dB(W/Hz) when measured in a 1 Hz bandwidth, dB(W/4kHz) when measured in a 4 kHz bandwidth, or dB(W/1MHz) when measured in a 1 MHz bandwidth.

Protection areas. The geographic regions on the surface of the Earth where U.S. Department of Defense meteorological satellite systems or National Oceanic and Atmospheric Administration meteorological satellite systems, or both such systems, are receiving signals from low earth orbiting satellites. Also, geographic areas around Ka-band feeder-link earth stations in the 1.6/2.4 GHz Mobile Satellite Service are determined in the manner specified in § 25.203(j).

* * * * *

Routine processing or licensing. A licensing process whereby applications are processed in an expedited manner. To be eligible for routine processing, an application must be complete in all regards, must be consistent with all Commission Rules, and must not raise any policy issues. With respect to fixed earth station licensing (including temporary fixed stations), an application is "routine" only if it is for an individual earth station that conforms to all applicable provisions of the Commission's rules pertaining to antenna performance, power, frequency coordination, radiation hazard, and FAA notification, and accesses only "Permitted Space Station List" satellites in the conventional C-band or Ku-band frequency bands.

* * * * *

20. In § 25.202, revise paragraphs (a)(1) and (a)(4)(iii)(A) to read as follows:

§ 25.202 Frequencies, frequency tolerance and emission limitations.

(a)(1) *Frequency band.* The following frequencies are available for use by the Fixed Satellite Service. Precise frequencies and bandwidths of emission shall be assigned on a case-by-case basis. The Table follows:

Space-to-earth (GHz)	Earth-to-space (GHz)
3.65–3.7 [17]	5.925–6.425 [1]
3.7–4.2 [1]	12.75–13.25 [1 12 14]
10.7–10.95 [1 2 12]	13.75–14 [4 12]
10.95–11.2 [1 2 12]	14–14.2 [5]
11.2–11.45 [1 2 12]	14.2–14.5
11.45–11.7 [1 2 12]	17.3–17.8 [9]
11.7–12.2 [3]	27.5–28.35 [24]
12.2–12.7 [13]	28.35–28.6 [19 23]
18.3–18.58 [10 24 25]	28.6–29.1 [20 23]
18.58–18.8 [6 10 11]	29.1–29.25 [21 23]
18.8–19.3 [7 10]	29.25–29.5 [22 23]
19.3–19.7 [8 10]	29.5–30.0 [19]
19.7–20.2 [10]	47.2–50.2 [1]
24.75–25.05 [18].	
25.05–25.25 [1 18].	
37.5–40 [15 16].	
37.6–38.6.	
40–42 [16].	

[1] This band is shared coequally with terrestrial radiocommunication services.

[2] Use of this band by geostationary satellite orbit satellite systems in the Fixed Satellite Service is limited to international systems, *i.e.,* other than domestic systems.

[3] Fixed-satellite transponders may be used additionally for transmissions in the broadcasting-satellite service.

[4] This band is shared on an equal basis with the Government radiolocation service and grandfathered space stations in the Tracking and Data Relay Satellite System.

[5] In this band, stations in the radionavigation service shall operate on a secondary basis to the Fixed Satellite Service.

[6] The band 18.58–18.8 GHz is shared coequally with existing terrestrial radiocommunication systems until June 8, 2010.

[7] The band 18.8–19.3 GHz is shared coequally with terrestrial radiocommunication services, until June 8, 2010. After this date, the sub-band 19.26–19.3 GHz is shared coequally with existing terrestrial radiocommunication systems.

[8] The use of the band 19.3–19.7 GHz by the Fixed Satellite Service (space-to-Earth) is limited to feeder links for the Mobile Satellite Service.

[9] The use of the band 17.3–17.8 GHz by the Fixed Satellite Service (Earth-to-space) is limited to feeder links for broadcasting-satellite service, and the sub-band 17.7–17.8 GHz is shared co-equally with terrestrial fixed services.

[10] This band is shared co-equally with the Federal Government Fixed Satellite Service.

[11] The band 18.6–18.8 GHz is shared coequally with the non-Federal Government and Federal Government Earth exploration-satellite (passive) and space research (passive) services.

[12] Use of this band by non-geostationary satellite orbit systems in the Fixed Satellite Service is limited to gateway earth station operations.

[13] Use of this band by the Fixed Satellite Service is limited to non-geostationary satellite orbit systems.

[14] Use of this band by NGSO FSS gateway earth station uplink operations is subject to the provisions of § 2.106 NG53.

[15] Use of this band by the Fixed Satellite Service is limited to gateway earth station operations, provided the licensee under this part obtains a license under part 101 of this chapter or an agreement from a part 101 licensee for the area in which an earth station is to be located. Satellite earth station facilities in this band may not be ubiquitously deployed and may not be used to serve individual consumers.

[16] The 37.5–40.0 GHz band is designated as being available for use by the fixed and mobile services and the 40.0–42.0 GHz band is designated as being available for use by the Fixed Satellite Service.

[17] FSS earth stations in this band must operate on a secondary basis to terrestrial radiocommunication services, except that the band is shared co-equally between certain grandfathered earth stations and the terrestrial radiocommunication services.

[18] Use of the 24.7–25.25 GHz band by the Fixed Satellite Service (Earth-to-space) is limited to feeder links for the broadcasting satellite service, and the 25.05–25.25 GHz subband is shared co-equally with terrestrial fixed services.

[19] This band is primary for GSO FSS and secondary for NGSO FSS.

[20] This band is primary for NGSO FSS and secondary for GSO FSS.

[21] This band is primary for MSS feeder links and LMDS hub-to-subscriber transmission.

[22] This band is primary for MSS feeder links and GSO FSS.

[23] This band is internationally allocated for FSS and terrestrial radio services on a co-primary basis.

[24] FSS is secondary to LMDS in this band.

[25] The band 18.3–18.58 GHz is shared co-equally with existing terrestrial radiocommunication systems until November 19, 2012.

* * * * *

(4) * * *

(iii)(A) The following frequencies are available for use by the 1.5/1.6 GHz Mobile Satellite Service:

1525–1559 MHz: space-to-Earth

1626.5–1660.5 MHz: Earth-to-space

* * * * *

21. In § 25.203, revise paragraphs (g)(2) and (g)(4) to read as follows:

§ 25.203 Choice of sites and frequencies.

* * * * *

(g) * * *

(2) In the event that the calculated value of the expected field strength exceeds 10 mV/m (-65.8 dBW/m^2) at the reference coordinates, or if there is any question whether field strength levels might exceed the threshold value, advance consultation with the FCC to discuss any protection necessary should be considered. *See* § 0.401 of this chapter for contact information.

* * * * *

(4) Advance coordination for stations operating above 1000 MHz is recommended only where the proposed station is in the vicinity of a monitoring station designated as a satellite monitoring facility in § 0.121(c) of this chapter and also meets the criteria outlined in paragraphs (g)(2) and (3) of this section.

* * * * *

22. In § 25.208, revise the introductory text of paragraph (s) to read as follows:

§ 25.208 Power flux density limits

* * * * *

(s) In the 40.0–40.5 GHz band, the power flux density at the Earth's surface produced by emissions from a space station for all conditions and for all methods of modulation shall not exceed the following values:

* * * * *

23. In § 25.209, revise the section heading to read as follows:

§ 25.209 Earth station antenna performance standards.

* * * * *

24. In § 25.210, remove and reserve paragraph (d) and revise paragraph (f) and the introductory text of paragraph (k) to read as follows:

§ 25.210 Technical requirements for space stations in the Fixed Satellite Service.

* * * * *

(f) All space station operation in any Fixed Satellite Service frequency band, including feeder links for other space services, and in the Broadcasting-Satellite Service in the 17.3–17.8 GHz band (space-to-Earth), shall employ state-of-the-art full frequency reuse, either through the use of orthogonal polarizations within the same beam and/or the use of spatially independent beams.

* * * * *

(k) Antenna measurements of both co-polarized and cross-polarized performance must be made on all antennas employed by space stations both within and outside the primary coverage area. The results of such measurements shall be submitted to the Commission within thirty days after preliminary in-orbit testing is completed.

* * * * *

25. In § 25.211, revise paragraph (e) to read as follows:

§ 25.211 Analog video transmissions in the Fixed Satellite Services.

* * * * *

(e) Antennas smaller than those specified in paragraph (d) of this section are subject to the provisions of § 25.220. These antennas will not be routinely licensed for transmission of full transponder services.

* * * * *

26. Amend § 25.212 by revising the section heading and paragraphs (c), (d)(2), (d)(3), and (e), to read as follows:

§ 25.212 Narrowband analog transmissions and all digital transmissions in the GSO Fixed Satellite Service.

* * * * *

(c)(1) In the 14.0–14.5 GHz band, an earth station with an antenna equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband analog services with bandwidths up to 200 kHz if the maximum input power spectral density into the antenna does not exceed –8 dBW/4 kHz and the maximum transmitted satellite carrier EIRP density does not exceed 17 dBW/4 kHz.

(2) In the 14.0–14.5 GHz band, an earth station with an antenna equivalent diameter of 1.2 meters or greater may be routinely licensed for transmission of narrowband and/or wideband digital services, including digital video services, if the maximum input spectral power density into the antenna does not exceed –14 dBW/4 kHz, and the maximum transmitted satellite carrier EIRP density does not exceed +10.0 dBW/4 kHz.

(3) Antennas transmitting in the 14.0–14.5 GHz band with a major and/or minor axis smaller than 1.2 meters are subject to the provisions of either § 25.218 or § 25.220.

(d) * * *

(2) For earth stations licensed after March 10, 2005 in the 5925–6425 MHz band, an earth station with an equivalent diameter of 4.5 meters or greater may be routinely licensed for transmission of SCPC services if the maximum power densities into the antenna do not exceed +0.5 dBW/4 kHz for analog SCPC carriers with bandwidths up to 200 kHz, and do not exceed $-2.7 - 10\log(N)$ dBW/4 kHz for digital SCPC carriers. For digital SCPC using a frequency division multiple access (FDMA) or time division multiple access (TDMA) technique, N is equal to one. For digital SCPC using a code division multiple access (CDMA) technique, N is the maximum number of co-frequency simultaneously transmitting earth stations in the same satellite receiving beam.

(3) Antennas with an equivalent diameter smaller than 4.5 meters in the 5925–6425 MHz band are subject to the provisions of either § 25.218 or § 25.220.

(e) Each applicant for authorization for transmissions in the Fixed Satellite Service proposing to use transmitted satellite carrier EIRP densities, and/or maximum antenna input power densities in excess of those specified in paragraph (c) of this section in the 14.0–14.5 GHz band, or in paragraph (d) of this section in the 5925–6425 MHz band, respectively, must comply with

the procedures set forth in either § 25.218 or § 25.220.

* * * * *

27. In § 25.214, revise paragraph (a)(2) to read as follows:

§ 25.214 Technical requirements for space stations in the satellite digital audio radio service.

(a) * * *

(2) *Frequency Assignment.* The term "frequency assignment" refers to the authorization given by the Commission for a radio station to use a radio frequency or radio frequency channel under specified conditions. This term shall be applied to the two frequency bands (A) 2320.0–2332.5 MHz and (B) 2332.5–2345.0 MHz for satellite DARS.

* * * * *

28. Amend § 25.218 by revising paragraph (a) to read as follows:

§ 25.218 Off-Axis EIRP Envelopes for FSS earth station operations.

(a) This section applies to all applications for FSS earth stations operating in the C-band, Ku-band, or extended Ku-band, except for

(1) ESV applications,

(2) Analog video earth station applications, and

(3) Applications for feeder-link earth stations in the 17/24 GHz BSS.

* * * * *

29. Amend § 25.221 by revising paragraph (b)(1)(ii) to read as follows:

§ 25.221 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 3700–4200 MHz (space-to-Earth) frequency band and transmitting in the 5925–6425 MHz (Earth-to-space) frequency band, operating with Geostationary Satellite Orbit (GSO) Satellites in the Fixed Satellite Service.

* * * * *

(b) * * *

(1) * * *

(ii) A certification, in Schedule B, that the ESV antenna conforms to the gain pattern criteria of § 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section will be met under the assumption that the antenna is pointed at the target satellite. If an antenna proposed for use by the applicant does not comply with the antenna performance standards contained in § 25.209(a) and (b), the applicant must provide, as an exhibit to its application, the antenna gain patterns specified in § 25.132(b).

* * * * *

30. Amend § 25.222 by revising paragraph (b)(1)(ii) to read as follows:

§ 25.222 Blanket Licensing provisions for Earth Stations on Vessels (ESVs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Orbit (GSO) Satellites in the Fixed Satellite Service.

* * * * *

(b) * * *

(1) * * *

(ii) A certification, in Schedule B, that the ESV antenna conforms to the gain pattern criteria of §§ 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section will be met under the assumption that the antenna is pointed at the target satellite. If an antenna proposed for use by the applicant does not comply with the antenna performance standards contained in §§ 25.209(a) and (b), the applicant must provide, as an exhibit to its application, the antenna gain patterns specified in § 25.132(b).

* * * * *

31. Amend § 25.226 by revising paragraph (b)(1)(ii) to read as follows:

§ 25.226 Blanket Licensing provisions for domestic, U.S. Vehicle-Mounted Earth Stations (VMESs) receiving in the 10.95–11.2 GHz (space-to-Earth), 11.45–11.7 GHz (space-to-Earth), and 11.7–12.2 GHz (space-to-Earth) frequency bands and transmitting in the 14.0–14.5 GHz (Earth-to-space) frequency band, operating with Geostationary Satellites in the Fixed Satellite Service.

* * * * *

(b) * * *

(1) * * *

(ii) A VMES applicant shall include a certification, in Schedule B, that the VMES antenna conforms to the gain pattern criteria of §§ 25.209(a) and (b), that, combined with the maximum input power density calculated from the EIRP density less the antenna gain, which is entered in Schedule B, demonstrates that the off-axis EIRP spectral density envelope set forth in paragraphs (a)(1)(i)(A) through (a)(1)(i)(C) of this section will be met under the assumption that the antenna is pointed at the target satellite. If an antenna proposed for use by the applicant does not comply with the antenna performance standards contained in §§ 25.209(a) and (b), the applicant must provide, as an exhibit to its application, the antenna gain patterns specified in § 25.132(b).

* * * * *

32. In § 25.251, revise paragraph (b) to read as follows:

§ 25.251 Special requirements for coordination.

* * * * *

(b) The technical aspects of coordination are based on Appendix 7 of the International Telecommunication Union Radio Regulations and certain recommendations of the ITU Radiocommunication Sector (available at the address in § 0.445 of this chapter).

33. In § 25.259, revise paragraph (a) to read as follows:

§ 25.259 Time sharing between NOAA meteorological satellite systems and non-voice, non-geostationary satellite systems in the 137–138 MHz band.

(a) The space stations of a non-voice, non-geostationary Mobile Satellite Service (NVNG MSS) system time-sharing downlink spectrum in the 137–138 MHz frequency band with National Oceanic and Atmospheric Administration (NOAA) satellites shall not transmit signals into the "protection areas" of the NOAA satellites.

(1) With respect to transmission in the 137.333–137.367 MHz, 137.485–137.515 MHz, 137.605–137.635 MHz, and 137.753–137.787 MHz bands, the protection area for a NOAA satellite is the area on the Earth's surface in which the NOAA satellite is in line of sight from the ground at an elevation angle of five degrees or more above the horizon. No NVNG MSS satellite shall transmit in these bands when it is in line of sight at an elevation angle of zero degrees or more from any point on the ground within a NOAA satellite's protected area for that band.

(2) With respect to transmission in the 137.025–137.175 MHz and 137.825–138 MHz bands, the protection area for a NOAA satellite is the area on the Earth's surface in which the NOAA satellite is in line of sight from the ground at any elevation angle above zero degrees. No NVNG MSS satellite shall transmit in these bands when at a line-of-sight elevation angle of zero degrees or more from any point on the ground within a NOAA satellite's protected area for that band. In addition, such an NVNG MSS satellite shall cease transmitting when it is at an elevation angle of less than zero degrees from any such point, if reasonably necessary to protect reception of the NOAA satellite's signal.

(3) An NVNG MSS licensee is responsible for obtaining the ephemeris data necessary for compliance with these restrictions. The ephemeris

information must be updated system-wide on at least a weekly basis. For calculation required for compliance with these restrictions an NVNG MSS licensee shall use an orbital propagator algorithm with an accuracy equal to or greater than the NORAD propagator used by NOAA.

* * * * *

34. In § 25.260, revise paragraph (a) to read as follows:

§ 25.260 Time sharing between DoD meteorological satellite systems and non-voice, non-geostationary satellite systems in the 400.15–401 MHz band.

(a) The space stations of a non-voice, non-geostationary Mobile Satellite Service (NVNG MSS) system time-sharing downlink spectrum in the 400.15–401.0 MHz band with Department of Defense (DoD) satellites shall not transmit signals into the "protection areas" of the DoD satellites.

(1) The protection area for such a DoD satellite is the area on the Earth's surface in which the DoD satellite is in line of sight from the ground at an elevation angle of five degrees or more above the horizon.

(2) An NVNG MSS space station shall not transmit in the 400.15–401 MHz band when at a line-of-sight elevation angle of zero degrees or more from any point on the ground within the protected area of a DoD satellite operating in that band.

(3) An NVNG MSS licensee is responsible for obtaining the ephemeris data necessary for compliance with this restriction. The ephemeris information must be updated system-wide at least once per week. For calculation required for compliance with this restriction an NVNG MSS licensee shall use an orbital propagator algorithm with an accuracy equal to or greater than the NORAD propagator used by DoD.

* * * * *

35. In § 25.271, revise paragraphs (c)(1) and (c)(3) to read as follows:

§ 25.271 Control of transmitting stations.

* * * * *

(c) * * *

(1) The parameters of the transmissions of the remote station monitored at the control point, and the operational functions of the remote earth stations that can be controlled by the operator at the control point, are sufficient to ensure that the operations of the remote station(s) are at all times in full compliance with the remote station authorization(s);

* * * * *

(3) Upon detection by the licensee, or upon notification from the Commission of a deviation or upon notification by another licensee of harmful interference, the operation of the remote station shall be immediately suspended by the operator at the control point until the deviation or interference is corrected, except that transmissions concerning the immediate safety of life or property may be conducted for the duration of the emergency; and

* * * * *

36. In § 25.272, revise paragraph (a) to read as follows:

§ 25.272 General inter-system coordination procedures.

(a) Each space station licensee in the Fixed Satellite Service shall establish a satellite network control center which will have the responsibility to do the following:

(1) Monitor space-to-Earth transmissions in its system (thus indirectly monitoring uplink earth station transmissions in its system) and

(2) Coordinate transmissions in its satellite system with those of other systems to prevent harmful interference incidents or, in the event of a harmful interference incident, to identify the source of the interference and correct the problem promptly.

* * * * *

37. In § 25.273, revise paragraph (a)(2) to read as follows:

§ 25.273 Duties regarding space communications transmissions.

(a) * * *

(2) Conduct transmissions over a transponder unless the operator is authorized to transmit at that time by the satellite licensee or the satellite licensee's successor in interest; or

* * * * *

38. In § 25.274, revise paragraph (b) to read as follows:

§ 25.274 Procedures to be followed in the event of harmful interference.

* * * * *

(b) The earth station operator shall then check all other earth stations in the licensee's network that could be causing the harmful interference to ensure that none of them is the source of the interference and to verify that the interference is not from a local terrestrial source.

* * * * *

39. In § 25.276, revise paragraph (c) to read as follows:

§ 25.276 Points of communication.

* * * * *

(c) Transmission to or from foreign points over space stations in the Fixed Satellite Service are subject to the requirements set forth in § 25.137.

40. In § 25.283, revise paragraph (a) to read as follows:

§ 25.283 End-of-life disposal.

(a) Geostationary orbit space stations. Unless otherwise explicitly specified in an authorization, a space station authorized to operate in the geostationary satellite orbit under this part shall be relocated, at the end of its useful life, barring catastrophic failure of satellite components, to an orbit with a perigee with an altitude of no less than:

$36{,}021\ \text{km} + (1000 \cdot C_R \cdot A/m)$

where C_R is the solar radiation pressure coefficient of the spacecraft, and A/m is the Area to mass ratio, in square meters per kilogram, of the spacecraft.

* * * * *

[FR Doc. 2010–6791 Filed 3–26–10; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 75, No. 59
Monday, March 29, 2010

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

March 23, 2010.

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.

Foreign Agricultural Service

Title: Dairy Tariff-Rate Import Quota Licensing Program.

OMB Control Number: 0551–0001.

Summary of Collection: The Dairy Tariff-Rate Import Quota regulation (the Regulation) (7 CFR part 6) governs the administration of the import licensing system applicable to most dairy products subject to tariff-rate quotas (TRQs). The TRQs were established in the Harmonized Tariff Schedule of the United States as a result of certain provisions in the Uruguay Round Agreement Act (Pub. L. 103–465) that converted existing absolute quotas to TRQs. Imports of nearly all cheese made from cow's milk (except soft-ripened cheese such as Brie) and certain non-cheese dairy products (including butter and dried milk) are subject to TRQs and the Regulation. Licenses are issued each quota year to eligible applicants and are valid for 12 months (January 1 through December 31). Importers without licenses may enter dairy articles only at the over-quota tariff-rates. The Foreign Agricultural Service (FAS) will collect information using several forms.

Need and Use of the Information: FAS will use the information to assure that the intent of the legislation is correctly administered and to determine eligibility to obtain benefits under the Regulation. If the information were collected less frequently, FSA would be unable to issue licenses on an annual basis in compliance with the Regulation.

Description of Respondents: Business or other-for-profit; Individuals or households.

Number of Respondents: 700.

Frequency of Responses: Recordkeeping, Reporting: Annually.

Total Burden Hours: 459.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2010–6828 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Online Registration for FSA-sponsored Events and Conferences

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on an extension without revision of the information collection associated with online registration for FSA-sponsored events and conferences. The information collection is needed for FSA to obtain information from the respondents who register on the Internet to make payment and reservations to attend any FSA-sponsored conferences and events.

DATES: Comments must be received on or before May 28, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* Farm Service Agency, USDA, Office of External Affairs, Jeff Kerby, 1400 Independence Avenue, Mail Stop 0506, SW., Washington, DC 20250.
- *E-mail: jeff.kerby@wdc.usda.gov.*
- *Fax:* (202) 720–2979.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Jeff Kerby at the above addresses.

FOR FURTHER INFORMATION CONTACT: Jeff Kerby, Office of External Affairs, (202) 720–1593.

SUPPLEMENTARY INFORMATION:

Description of Information Collection

Title: Online Registration for FSA-sponsored Events and Conferences.

OMB Number: 0560–0226.

Expiration Date of Approval: 05/31/2010.

Type of Request: Extension with no revision.

Abstract: The collection of information is necessary for people to

register online to make payment and reservations to attend conferences and events. They can register on FSA's Online Registration site on the Internet. Respondents who do not have access to the Internet can register by mail or fax. The information is collected by the FSA employees who sponsor the conferences and events. The FSA is collecting common elements from interested respondents such as name, organization, address, country, phone number, State, city or town, payment options (cash, credit card, check) and special accommodations requests. The respondents are mainly individuals who are interested in attending the FSA-sponsored conferences or events. The information is used to collect payment from the respondents and make hotel reservations and other special arrangements as necessary.

Estimate of Annual Burden: 15 minutes.

Type of Respondents: Individuals.

Estimated Number of Respondents: 900.

Estimated Average Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 900.

Estimated Total Annual Burden on Respondents: 225 hours.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the FSA, including whether the information will have practical utility;

(2) Evaluate the accuracy of the FSA's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

Signed at Washington, DC, March 18, 2010.

Jonathon W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–6817 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Information Collection; Minority Farm Register

AGENCY: Farm Service Agency, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Farm Service Agency (FSA) is seeking comments from all interested individuals and organizations on the extension of a currently approved information collection for the Minority Farm Register. The Minority Farm Register is a voluntary register of minority farm and ranch operators, landowners, tenants and others with an interest in farming or agriculture. USDA Office of Outreach uses the collected information to better inform minority farmers about USDA programs and services.

DATES: We will consider comments that we receive by May 28, 2010.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- *Mail:* Monique B. Randolph, Staff Assistant, Farm Service Agency, STOP 0599, 1400 Independence Avenue, SW., Washington, DC 20250–0503.
- *E-mail: monique.randolph@usda.gov.*
- *Fax:* 202–690–0408.

You may also send comments to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be requested by contacting Monique B. Randolph at the above addresses.

FOR FURTHER INFORMATION CONTACT: Monique B. Randolph, Staff Assistant, Farm Service Agency, (202) 720–0402.

SUPPLEMENTARY INFORMATION:

Title: USDA Minority Farm Register.

OMB Number: 0560–0231.

Expiration Date: 9/30/2010.

Type of Request: Extension.

Abstract: The Minority Farm Register is a voluntary register of minority farm and ranch operators, landowners, tenants and others with an interest in farming or agriculture. The registrant's name, address, email, phone number, race, ethnicity, gender, farm location, and signature will be collected. The name, address, and signature are the only items required to register. Providing this information is completely voluntary. USDA's Office of Outreach will use this information to help inform minority farmers and ranchers about programs and services provided by USDA agencies.

The Minority Farm Register is maintained by FSA and jointly administered by FSA and USDA's Office of Outreach. Because USDA partners with community-based organizations, minority-serving educational institutions, and other groups to communicate USDA's program and services, the Office of Outreach may share information collected with these organizations for outreach purposes. The race, ethnicity, and gender of registrants may be used to provide information about programs and services that are designed for these particular groups. Information about the Minority Farm Register is available on the internet to ensure that the program is widely publicized and accessible to all.

Respondents: Individuals and households.

Estimated Annual Number of Respondents: 5,000.

Estimated Annual Number of Forms Filed per Person: 1.

Estimated Total Number of Responses: 5,000.

Estimated Average Time to Respond: 5 minutes and 1 hour of traveling time.

Estimated Total Annual Burden Hours: 4667.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected;

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for OMB approval.

Signed at Washington, DC, on March 18, 2010.

Jonathon W. Coppess,

Administrator, Farm Service Agency.

[FR Doc. 2010–6830 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Information Collection, Procurement of Agricultural Commodities for Foreign Donation

AGENCY: Commodity Credit Corporation, USDA

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commodity Credit Corporation (CCC) is requesting comments from all interested individuals and organizations on an extension of a currently approved information collection associated with procurement of agricultural commodities for foreign donation. The Kansas City Commodity Office (KCCO) issues a public invitation soliciting bids for the sale of commodities and requests ocean carrier provide indications of available freight rates to KCCO using the Freight Bid Entry System (FBES). Use of this system enhances bidding opportunities for potential vendors while allowing CCC to efficiently acquire commodities.

DATES: Comments on this notice must be received on or before May 28, 2010 to be assured consideration.

ADDRESSES: We invite you to submit comments on this notice. In your comments, include date, volume and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

Mail: Sharon Hadder, Farm Service Agency, Commodity Operations, Stop 0550, 1400 Independence Ave., SW., Washington, DC 20250.

E-mail: Send comment to: *Sharon.Hadder@usda.gov.*

Fax: (202) 690–1809.

Comments also should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Copies of the information collection may be obtained from Sharon Hadder at the above address.

FOR FURTHER INFORMATION CONTACT: Sharon Hadder, Agricultural Marketing Specialist, telephone (202) 720–3816.

SUPPLEMENTARY INFORMATION:

Title: Procurement of Agricultural Commodities for Foreign Donation.

OMB Number: 0560–0258.

Expiration Date: May 31, 2010.

Type of Request: Extension of a currently approved information collection.

Abstract: The United States donates agricultural commodities overseas to meet famine or other relief requirements, to combat malnutrition, and sells or donates commodities to promote economic development.

To accommodate these donations, CCC issues invitations to purchase agricultural commodities and services, such as transportation, for use in international programs. Ocean transportation contracting is done by the Cooperating Sponsors or Private Volunteer Organizations (PVOs) (grantee organizations or foreign governments receiving the commodities) or the United States Agency for International Development (USAID) in the case of some Title II, Public Law 480 shipments. KCCO evaluates commodity bids together with the freight rate indications to identify the combination which most likely results in the lowest-landed cost, i.e., the lowest combined cost of commodities and freight to destination.

Vendors bid for ocean freight by making offers using FBES to place bids electronically. Vendors can access FBES on-line to see the date/time the system shows for receipt of bid, bid modification, or bid cancellation. At bid opening date/time, the bids submitted through FBES are system evaluated. KCCO then awards commodity bids on the basis of lowest landed cost by a comparison with offered freight rates and notifies the Cooperating Sponsor or PVO of the bid accepted. Awarded contracts are posted on our Web site.

The KCCO is currently using the FBES. Use of this system enhances bidding opportunities for potential vendors while allowing CCC to more efficiently acquire commodities. The Web-Based Supply Chain System (WBSCM) is a new procurement system in development to eliminate the need for FBES and to replace the other current systems for several USDA agencies, and the USAID. The OMB approval will expire on May 31, 2010, and WBSCM will be released on June 30, 2010. Upon release of WBSCM, this information collection request (ICR) will be discontinued but it will be covered in the Federal Acquisition Regulation as specified in the OMB control number 9000–0034 (SF–33, SF–26, SF–1447) to cover the bid-related information in the system. CCC is requesting to extend approval until August 31, 2010, and it may merge with OMB Control Number 0560–0177, WBSCM.

Estimate of Average time to Respond: 16 minutes.

Respondents: Steamship lines and/or their agents.

Estimated Number of Respondents: 15.

Estimated Number of Responses per Respondent: 8.

Estimated Number of Responses: 120.

Estimated Total Annual Burden on Respondents: 24.

We are requesting comments on all aspects of this information collection and to help us to:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of burden 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.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC on March 18, 2010.

Jonathon W. Coppess,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 2010–6820 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Plan Revision for Malheur, Umatilla and Wallowa-Whitman National Forests, Oregon and Washington (Collectively Called the Blue Mountains Forest Plan Revision)

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and revised land management plan using the provisions of the National Forest System land and resource management planning rule in effect prior to November 9, 2000 for the Malheur (including that portion of the Ochoco National Forest administered by the Malheur National Forest), Umatilla and Wallowa-Whitman National Forests, Adams, Idaho, and Nez Perce Counties

in Idaho; Baker, Grant, Harney, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties in Oregon; Asotin, Columbia, Garfield, and Walla Walla Counties in Washington.

SUMMARY: As directed by the National Forest Management Act, the USDA Forest Service is preparing the Malheur, Umatilla and Wallowa-Whitman National Forests revised land management plans and will also prepare an environmental impact statement for these revised plans. This notice briefly describes the purpose and need, the proposed action, the scoping process for the plan revisions (including any scoping meetings), information concerning public participation, estimated dates for filing the EIS and provides the names and addresses of the responsible agency official and the individuals who can provide additional information. This notice also briefly describes the applicable planning rule.

The revised land management plans will supersede the land management plans previously approved by the Regional Forester. The Malheur National Forest land management plan was signed on May 25, 1990 and has been amended 67 times. The Umatilla National Forest land management plan was signed on June 11, 1990 and has been amended 34 times. The Wallowa-Whitman National Forest land management plan was signed on April 23, 1990, and has been amended 43 times. Most forest plan amendments are project-specific amendments and apply to that project only. Some amendments incorporated new management direction for specific management areas, such as wild and scenic rivers. Five amendments were incorporated into all three forest plans by the Regional Forester. These amendments included direction for managing streams and riparian areas, old growth forests, and treatment of invasive species. These amended plans will remain in effect until the revision takes effect.

DATES: Comments concerning the scope of this analysis must be received by May 25, 2010. The agency expects to complete a proposed plan and draft environmental impact statement by April 2011 and a final plan and final environmental impact statement by March 2012.

See **SUPPLEMENTARY INFORMATION** section for meeting dates.

ADDRESSES: Send written comments to: Wallowa-Whitman National Forest, Attn: Blue Mountains Forest Plan Revision Team, P.O. Box 907, Baker City, Oregon 97814, or e-mail: *blue_mtn_planrevision@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Katie Countryman, Forest Plan Revision Team leader, phone 541–523–1264 or Tim Gliddon, Planning Assistant, phone 541–523–1269. Information on this revision is also available at the Blue Mountain Forest Plan Revision Web site *http://www.fs.fed.us/r6/uma/blue_mtn_planrevision.*

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339 between 8 a.m. and 8 p.m., Eastern Time Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need

The existing forest plans are 20 years old. Economic, social, and ecological conditions changed during that time; new laws, regulations and policies are in place; and new information based on monitoring and scientific research is available. The Malheur, Umatilla, and Wallowa-Whitman National Forests are revising their 1990 forest plans to meet the legal requirements of the National Forest Management Act (NFMA) of 1976; to address changed conditions and provide consistent management direction (as appropriate) across the three national forests; to incorporate changes in law, regulation, and policy; and to utilize new scientific information. In particular, the interdisciplinary planning team intends to address the following areas in the revised forest plans:

1. To more adequately protect and restore terrestrial plant and animal species and their habitats. Two objectives in the Strategic Plan for the Forest Service are to "provide ecological conditions to sustain viable populations of native and desired nonnative species and to achieve objectives for management indicator and focal species." The Columbia Basin Strategy (2000) identifies key elements to be addressed in planning efforts, such as source habitats, that are not addressed in the 1990 forest plans. The structural arrangement of vegetation, both vertical and horizontal, and the size and arrangement of trees, grasses, and shrubs are important components of wildlife habitat. Many changes to forest stand structure have occurred due to disturbances such as fire, timber harvest, and insects and disease. There has been a loss of large (20 inches DBH and greater) and medium (15 to 20 inches DBH) trees across the landscape. Dry old single story forest has been greatly reduced from pre-1900 levels. Some of the most significant changes in forested structural stages have occurred in the dry forest environment. All of these changes have led to reductions in habitat for some species and increases for others. The 1990 forest plans need to be updated to reflect current science relating to plant and animal species and their habitats.

2. To address management of fuels and fire risk. Changing vegetative conditions have made forests more susceptible to disturbances, such uncharacteristically severe fires, insects and disease. Several factors have contributed to the changes, including the cumulative effects of a periodic and sometimes extended drought, climate change, increasing vegetative density, shifts in forest species composition, and modified landscape patterns. Forested areas on the three national forests are dominated by dense, multi-layered conifer stands with tree species that are not well suited for the area. The 1990 forest plan standards and guidelines do not adequately address the multiple factors that have created the existing uncharacteristic conditions nor do they adequately address the varied nature of the landscape. Neither do they address the need for management strategies that recognize the unique qualities of various landscapes. An integrated strategy that recognizes multiple risk factors and addresses variability in conditions and site potentials is needed.

3. To more adequately protect and restore watersheds and aquatic habitats. The Columbia Basin Strategy (2000) emphasizes restoring the processes responsible for creating and maintaining aquatic and riparian habitats and restoring naturally functioning riparian ecosystems. It also outlines specific components to be included in revised forest plans. The 1990 forest plans include, by amendment, interim direction (*i.e.,* PACFISH, INFISH, and the Eastside Screens) for management of threatened or endangered fish species. However, the 1990 plan language was never changed to integrate this interim direction or resolve conflicts between the existing plan language and the interim direction language. The 1990 forest plans do not adequately provide integrated management strategies for maintenance and restoration of properly functioning watersheds that provide a range of benefits on and off the national forests. These include, but are not limited to, providing habitat for terrestrial, aquatic, and riparian-dependent species; maintaining water quality; providing channel stability; reducing erosion; moderating floods; and maintaining reliable stream flows for downstream users.

4. To address climate change. The 1990 forest plans do not address climate change. Climate change is expected to

affect plant species range and composition and alter competitive relationships between plant species. Changes in the composition and structure of plant communities will, in turn, alter the character and distribution of wildlife habitats. Future conditions may be more favorable to some undesired non-native plant and animal species. The full extent of changes in response to climate change on natural resources in the Blue Mountains is uncertain, but integrated management direction is needed to maintain or increase the resilience of the national forests in the face of these changes.

5. To recognize the interdependency of social and economic components with national forest management. The relationship between the national forests and the people who live, work, and play in them is not adequately recognized in the 1990 forest plans. National forests provide a variety of recreation opportunities, work opportunities, and opportunities to exercise cultural and spiritual traditions. Local communities provide infrastructure that contributes to the ability of the national forests to restore and maintain ecological systems. In eastern Oregon in particular, the tie between national forest management and the social and economic well-being of local communities is particularly important. With historically high unemployment rates and many small communities poorly positioned to attract new industries providing family-wage jobs, logging and wood processing jobs are essential to maintaining and improving social and economic conditions. In addition, many of the actions needed to improve forest structure, reduce fuel loadings and conduct other restoration activities in eastern Oregon are dependent on the workforce and infrastructure associated with logging and wood processing.

Proposed Action

The Proposed Action is a revision of the land management plans for the Malheur, Umatilla and Wallowa-Whitman National Forests designed to meet the purpose and need. It includes revised goals/desired conditions, objectives, standards, guidelines, suitable uses and activities, management area designations including special areas, and monitoring items. The Proposed Action can be found at the Blue Mountains Forest Plan Revision Web site: *http://www.fs.fed.us/r6/uma/blue_mtn_planrevision/.*

Public Participation

The Malheur, Umatilla, and Wallowa-Whitman National Forests began this forest plan revision process in 2003. Public participation began in 2004 with community workshops. Workshops were held in Baker City, Burns, Enterprise, Heppner, John Day, La Grande and Portland, Oregon, and in Dayton and Pasco, Washington. Workshops were also held in 2005 and 2006. Three field trips, one on each forest, were conducted in 2005. Meetings with representatives of the counties where the forests are located began in 2004 and are continuing. Government-to-government consultation with Tribal nations and staff-to-staff consultation with their resource specialists began early in the process and will continue.

Public meetings are scheduled at the following dates and locations:

April 6, 2010—5 p.m. Federal Building, 431 Patterson, John Day, Oregon.

April 7, 2010—5 p.m. Harney County Senior Center, 17 S. Alder, Burns, Oregon.

April 13, 2010—5 p.m. Pendleton Convention Center, Rooms 3 & 4, 1601 Westgate, Pendleton, Oregon.

April 14, 2010—5 p.m. St. Patrick Senior Center, 182 N. Main, Heppner, Oregon.

April 15, 2010—5 p.m. Public Use Building, 1 N. Pine, Dayton, Washington.

April 20, 2010—5 p.m. Sunridge Inn, One Sunridge Lane, Baker City, Oregon.

April 21, 2010—5 p.m. Eastern Oregon University, One University Blvd, Hoke Hall, Room 309, La Grande, Oregon.

April 22, 2010—5 p.m. Civic Center, 102 E. 1st St., Joseph, Oregon.

April 28, 2010—5 p.m. Red Lion Hotel Portland Convention Center, 1021 NE. Grand Avenue, Portland, Oregon.

April 29, 2010—5 p.m. Franklin County Public Utility District Auditorium, 1411 West Clark, Pasco, Washington.

Lead and Cooperating Agencies

The Forest Service, USDA, is the lead agency. Cooperating agencies are: The State of Oregon; Baker County, Grant County, Harney County, Morrow County, Umatilla County, Wallowa County, and Wheeler County in Oregon; and Asotin County, Columbia County, and Garfield County in Washington. The Confederated Tribes of the Umatilla Indian Reservation is also a cooperating agency.

Name and Address of the Responsible Official

Mary Wagner, Regional Forester, Pacific Northwest Region, 333 SW. 1st Street, P.O. Box 3623, Portland, Oregon 97208.

Nature of the Decision To Be Made

The Malheur, Umatilla, and Wallowa-Whitman National Forests are preparing an EIS to revise the current forest plans. The EIS process is meant to inform the Regional Forester so that she can decide which alternative best meets the need to achieve quality land management to meet the diverse needs of people while protecting the forests' resources, as required by the National Forest Management Act and the Multiple Use Sustained Yield Act.

The revised forest plans provide guidance for all resource management activities on the Malheur, Umatilla and Wallowa-Whitman National Forests. Approval of the revised forest plans will result in the following plan components to guide management for the next 10 to 15 years:

- Goals/desired conditions;
- Objectives;
- Forest-wide standards and guidelines;
- Management area desired conditions, standards, and guidelines;
- Suitability of lands for uses and activities;
- Monitoring and evaluation requirements; and
- Recommendations may be made for special areas, such as Research Natural Areas, or areas that can only be designated by statute, such as wilderness.

Goals/desired conditions provide a description of desired outcomes of forest management. Objectives provide projections of measurable outcomes intended to promote achievement of forest plan goals/desired conditions. Forest-wide standards and guidelines provide management direction and guidance that is applicable across each national forest. Management Area desired conditions, standards, and guidelines provide direction that applies to specific geographic areas within the three national forests. Identification of characteristics of lands for specific uses and activities provides integration between particular uses and desired conditions and objectives for areas on the national forest. Monitoring and evaluation indicates whether areas are trending toward goals/desired conditions so that needed adjustments can be made in the future. Special areas are places or areas within the National Forest System designated because of their unique or special characteristics. Some can be designated by the responsible official, such as a botanical area. Others, such as wilderness or wild and scenic river designations, are recommended for designation by the responsible official, and are designated by Congressional action.

As important as the decisions to be made is the identification of the types of decisions that will not be made within the revised forest plan. The authorization of project-level activities on the forests is not a decision made in the forest plan but occurs through subsequent project specific decision-making. The designation of routes, trails, and areas for motorized vehicle travel are not considered during plan revision. Some issues (*e.g.,* hunting regulations), although important, are beyond the authority or control of the national forests and will not be considered. In addition, some issues, such as wild and scenic river suitability determinations, may not be undertaken at this time, but addressed later as a future forest plan amendment. The Hells Canyon National Recreation Area (HCNRA), administered by the Wallowa-Whitman National Forest, is managed under the HCNRA Comprehensive Management Plan, a part of the Wallowa-Whitman National Forest land management plan. The HCNRA Comprehensive Management Plan was revised in 2003 and is not being considered for modification in this revision process.

Applicable Planning Rule

On December 18, 2009 the Department reinstated the previous planning rule, commonly known as the 2000 planning rule in the **Federal Register** (**Federal Register**, Volume 74, No. 242, Friday, December 18, 2009, pages 67059 through 67075). The transition provisions of the reinstated rule (36 CFR 219.35 and appendices A and B) allow use of the provisions of the National Forest System land and resource management planning rule in effect prior to the effective date of the 2000 rule (November 9, 2000), commonly called the 1982 planning rule, to amend or revise plans. The Malheur, Umatilla, and Wallowa-Whitman National Forests have elected to use the provisions of the 1982 planning rule including the requirement to prepare an EIS, to complete plan revisions. Although the 2008 planning rule is no longer in effect, information gathered prior to the court's injunction is useful for completing the plan revisions using the provisions of the 1982 planning rule. The Blue Mountains Plan Revision Team has concluded that the analyses begun or developed during the revision process to date are appropriate for continued use in the revision process.

Roadless Area Management Direction

The proposed action includes management direction for all National Forest System lands within the planning area, including lands identified as inventoried roadless areas (IRAs) in the Final Environmental Impact Statement for the 2001 Roadless Area Conservation Rule (RACR). There is currently a legal dispute regarding the status of the RACR, with one Federal Court (Wyoming District Federal Court, Judge Brimmer) finding the rule to be in conflict with law and enjoining its implementation and a different Federal Court (Northern California District Federal Court, Judge Laporte) reinstating that rule and prohibiting the Forest Service from taking any action that would have been prohibited under the RACR. The Forest Service is hopeful that current legal proceedings will resolve these conflicting court rulings.

The Proposed Action includes plan direction that retains the undeveloped character of all three national forests by including Management Areas that restrict road construction and timber harvest. This is based on analysis of the resources and management situation that the Forest Service has done in developing the Proposed Action and on extensive public involvement.

Comments received in the scoping process will help the agency determine the scope of issues related to roadless area management and guide the development of alternatives and analysis of environmental effects. The decision for the final plan will be consistent with the legal status of the RACR at the time the plan is signed.

Description of the Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. In scoping, the agency, with the assistance of the public, determines the scope of the issues to be addressed and identifies the significant issues related to the proposed action (*see* 40 CFR 1501.7).

It is important that reviewers provide their comments at such times and in such a way that they are useful to the Agency's preparation of the revised plan and the EIS. Therefore, comments should be provided prior to the close of the comment period and should clearly articulate the reviewers' concerns and contentions. The submission of timely and specific comments can affect a reviewer's ability to participate in subsequent objection, administrative appeal or judicial review.

Comments received in response to this solicitation, including the names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered.

Authority: 16 U.S.C. 1600–1614; 36 CFR 219.35 (74 FR 67073–67074).

Dated: March 22, 2010.

Mary Wagner,

Regional Forester, Forest Service Pacific Northwest Region.

[FR Doc. 2010–6748 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Inviting Applications for Rural Business Opportunity Grants

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business—Cooperative Service (RBS), an Agency within the Rural Development mission area, announces the availability of grants under the Rural Business Opportunity Grant (RBOG) program for fiscal year (FY) 2010, to be competitively awarded based on the terms of this notice and RBOG program regulations found at 7 CFR part 4284, subpart G in the following amounts:

1. Up to $250,000 per application.

These dollar limits do not apply to Federally Recognized Native American Tribes" (FRNAT), and Rural Economic Area Partnerships, for which the RBOG appropriation for FY 2010 provided specific funding.

Grant applications may be submitted for a work period not to exceed two years.

Applicants are strongly encouraged to review the regulations prior to submitting an application.

While not precluding any of the previous uses of these funds, the Agency is particularly interested in recruiting applications that will establish "best practice" projects in the area of regional economic and community development using key strategies of the United States Department of Agriculture (USDA). Regions can be either multi-jurisdictional areas within a State, territory, or Federally-designated Tribal land or can cross State, territory, or Tribal boundaries, and are herein referred to as "Great Regions" applicants. A Great Region application focusing on one or more of the key strategies outlined below may be eligible for additional discretionary points in the application scoring as outlined in the selection criterion in 7 CFR 4284.639(f). Projects should be

designed to help rural communities in the region create wealth so they are self-sustaining, repopulating and thriving economically, especially using any of the following USDA key strategies in sustainable ways:

1. Local and regional food systems as a strategy for encouraging production agriculture and related industries in new wealth creation;

2. Renewable energy generation, energy conservation, and/or climate change adaptation or mitigation as strategies for quality job creation;

3. Use of broadband and other critical infrastructure as a strategy to facilitate local entrepreneurship and expansion of market opportunities for small businesses;

4. Access to capital in rural areas as a strategy to ensure continuous business development and job creation/retention; and

5. Innovative utilization of natural resources as a strategy to expand business opportunities.

Applicants are encouraged to consider all available resources in their geographic area that can contribute to supporting their chosen strategies * * * After selection, grantees may be provided with targeted technical assistance by USDA or other Federal agencies as available and appropriate.

DATES: The deadline for the receipt of applications in the respective Rural Development State Office is 4 p.m. local time on June 28, 2010. Any applications received after that time will not be considered for FY 2010 funding; however, the Agency reserves the right to extend the application deadline.

Prospective applicants may submit an application for an informal eligibility pre-review no later than April 28, 2010. The pre-review is intended to provide feedback to the prospective applicant, but is not binding on the Agency.

ADDRESSES: Entities wishing to apply for a grant should contact a Rural Development State Office for additional information and copies of the application package. All applications should be submitted to the Rural Development State Office serving the State or territory where the project, or a majority of the project, would be located. Electronic applications must be submitted through the Grants.gov Web site at: *http://www.grants.gov,* following the instructions found on this Web site. Applicants whose projects would serve a multi-State area do not need to apply to each State Office. Following is the contact information for Rural Development State Offices:

Alabama

USDA Rural Development State Office, Sterling Centre, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683. (334) 279–3400/TDD (334) 279–3495.

Alaska

USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539. (907) 761–7705/TDD (907) 761–8905.

Arizona

USDA Rural Development State Office, 230 N. 1st Ave., Suite 206, Phoenix, AZ 85003. (602) 280–8701/TDD (602) 280–8705.

Arkansas

USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225. (501) 301–3200/TDD (501) 301–3279.

California

USDA Rural Development State Office, 430 G Street, # 4169, Davis, CA 95616–4169. (530) 792–5800/TDD (530) 792–5848.

Colorado

USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215. (720) 544–2903/TDD (720) 544–2976.

Connecticut (see Massachusetts)

Delaware/Maryland

USDA Rural Development State Office, 1221 College Park Drive, Suite 200, Dover, DE 19904. (302) 857–3580/TDD (302) 857–3585.

Florida/Virgin Islands

USDA Rural Development State Office, 4440 NW. 25th Place, P.O. Box 147010, Gainesville, FL 32614–7010. (352) 338–3400/TDD (352) 338–3499.

Georgia

USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768. (706) 546–2162/TDD (706) 546–2034.

Hawaii

USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720. (808) 933–8380/TDD (808) 933–8321.

Idaho

USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709. (208) 378–5600/TDD (208) 378–5644.

Illinois

USDA Rural Development State Office, 2118 West Park Court, Suite A, Champaign, IL 61821. (217) 403–6200/TDD (217) 403–6240.

Indiana

USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278. (317) 290–3100/TDD (317) 290–3343.

Iowa

USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309. (515) 284–4663/TDD (515) 284–4858.

Kansas

USDA Rural Development State Office, 1303 SW. First American Place, Suite 100, Topeka, KS 66604–4040. (785) 271–2700/TDD (785) 271–2767.

Kentucky

USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503. (859) 224–7300/TDD (859) 224–7422.

Louisiana

USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302. (318) 473–7921/TDD (318) 473–7655.

Maine

USDA Rural Development State Office, 967 Illinois Avenue, Suite 4, P.O. Box 405, Bangor, ME 04402–0405. (207) 990–9160/TDD (207) 942–7331.

Maryland (see Delaware)

Massachusetts/Rhode Island/Connecticut

USDA Rural Development State Office, 451 West Street, Suite 2, Amherst, MA 01002–2999. (413) 253–4300/TDD (413) 253–4590.

Michigan

USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823. (517) 324–5190/TDD (517) 324–5169.

Minnesota

USDA Rural Development State Office, 375 Jackson Street, Suite 410, St. Paul, MN 55101–1853. (651) 602–7800/TDD (651) 602–3799.

Mississippi

USDA Rural Development State Office, Federal Building, Suite 831, 100 West Capitol Street, Jackson, MS 39269. (601) 965–4316/TDD (601) 965–5850.

Missouri

USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203. (573) 876–0976/TDD (573) 876–9480.

Montana

USDA Rural Development State Office, 900 Technology Boulevard, Suite B, P.O. Box 850, Bozeman, MT 59771. (406) 585–2580/TDD (406) 585–2562.

Nebraska

USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, NE 68508. (402) 437–5551/TDD (402) 437–5093.

Nevada

USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–5146. (775) 887–1222/TDD (775) 885–0633.

New Jersey

USDA Rural Development State Office, 8000 Midlantic Drive, 5th Floor North, Suite 500, Mt. Laurel, NJ 08054. (856) 787–7700/TDD (856) 787–7784.

New Hampshire (see Vermont)

New Mexico

USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109. (505) 761–4950/TDD (505) 761–4938.

New York

USDA Rural Development State Office, The Galleries of Syracuse, 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541. (315) 477–6400/TDD (315) 477–6447.

North Carolina

USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609. (919) 873–2000/TDD (919) 873–2003.

North Dakota

USDA Rural Development State Office, Federal Building, Room 208, 220 East Rosser, P.O. Box 1737, Bismarck, ND 58502–1737. (701) 530–2037/TDD (701) 530–2113.

Ohio

USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2418. (614) 255–2400/TDD (614) 255–2554.

Oklahoma

USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654. (405) 742–1000/TDD (405) 742–1007.

Oregon

USDA Rural Development State Office, 1201 NE Lloyd Blvd., Suite 801, Portland, OR 97232. (503) 414–3300/TDD (503) 414–3387.

Pennsylvania

USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996. (717) 237–2299/TDD (717) 237–2261.

Puerto Rico

USDA Rural Development State Office, IBM Building, Suite 601, 654 Munos Rivera Avenue, San Juan, PR 00918–6106. (787) 766–5095/TDD (787) 766–5332.

Rhode Island (see Massachusetts)

South Carolina

USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201. (803) 765–5163/TDD (803) 765–5697.

South Dakota

USDA Rural Development State Office, Federal Building, Room 210, 200 Fourth Street, SW., Huron, SD 57350. (605) 352–1100/TDD (605) 352–1147.

Tennessee

USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084. (615) 783–1300.

Texas

USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501. (254) 742–9700/TDD (254) 742–9712.

Utah

USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84138. (801) 524–4320/TDD (801) 524–3309.

Vermont/New Hampshire

USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602. (802) 828–6000/TDD (802) 223–6365.

Virgin Islands (see Florida)

Virginia

USDA Rural Development State Office, 1606 Santa Rosa Road, Suite 238, Richmond, VA 23229–5014. (804) 287–1550/TDD (804) 287–1753.

Washington

USDA Rural Development State Office, 1835 Black Lake Boulevard SW., Suite B, Olympia, WA 98512–5715. (360) 704–7740/TDD (360) 704–7760.

West Virginia

USDA Rural Development State Office, 75 High Street, Room 320, Morgantown, WV 26505–7500. (304) 284–4860/TDD (304) 284–4836.

Wisconsin

USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481. (715) 345–7600/TDD (715) 345–7614.

Wyoming

USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, P.O. Box 11005, Casper, WY 82602–5006. (307) 233–6700/TDD (307) 233–6733.

U.S. Territories

Guam (see Hawaii)

Western Pacific (see Hawaii)

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business—Cooperative Service (RBS).

Funding Opportunity Type: Rural Business Opportunity Grants (RBOG).

Announcement Type: Initial Solicitation Announcement.

Catalog of Federal Domestic Assistance Number: 10.773

Dates: Application Deadline: Unless extended by the Agency, completed applications for these funds must be received in the respective Rural Development State Office no later than 4 p.m. on June 28, 2010, to be eligible for FY 2010 grant funding. Any applications received after that time will not be considered for FY 2010 funding; however, the Agency reserves the right to extend the application deadline. Electronic applications must be submitted through the Grants.gov Web site at: *http://www.grants.gov,* following the instructions found on this Web site.

Application pre-review: Prospective applicants may submit an application for an informal eligibility pre-review no later than April 28, 2010. The pre-review is intended to provide feedback to the prospective applicant, but is not binding on the Agency.

I. Funding Opportunity Description

While all of the many eligible purposes for Rural Business Opportunity Grants will continue to be considered, the Agency is particularly interested in recruiting applications that will establish "best practice" projects in the area of regional economic and community development using key strategies of the USDA as identified below. To ensure that a broad range of communities have the opportunity to benefit from the program, no grant will exceed $250,000. These limits do not apply to funding for rural areas designated as FRNATs or Rural Economic Area Partnerships.

Multi-County and Multi-State applicants, referred to as "Great Regions" applicants, can be either multi-jurisdictional areas within a State, territory, or Federally recognized Tribes with land in multiple States or a consortium of Federally recognized Tribes.

Great Regions applications should focus on the economic integration and cohesion of their self-defined geographic area. The Great Regions approach is intended to combine the resources of the Agency with those of State and local governments, educational institutions, and the private and nonprofit sectors to implement regional economic and community development strategies. Accordingly, the Agency will alert the grantee of other potential assistance both within USDA and across the Federal government in support of their project including USDA's various programs and sources of expertise.

The Agency encourages applications that promote substantive economic growth, including job creation, as well as specifically addressing the circumstances of those sectors within the region that have fewer prospects and the greatest need for improved economic opportunity.

Applications should demonstrate:

A. Clear leadership in organizing and coordinating a regional initiative;

B. Evidence that the applicant region has a common economic basis that supports the likelihood of success in implementing its strategy;

C. Evidence that the participants in the regional plan have the capacity to assess their circumstance, determine a long term sustainable vision for the region, and implement a comprehensive strategic plan, including identifying performance measures and establishing a system to collect the data to allow assessment of those performance measures;

D. Evidence that the participants in the regional plan are willing to work collaboratively with a broad range of institutions (*e.g.,* Federal agencies, State, local, and Tribal governments, non-profits, universities and colleges, private firms, philanthropic organizations);

E. Evidence that the participants in the regional plan will seek contributions or investments in the regional strategy from a board range of institutions;

F. Evidence that participants in the regional plan are willing to assure broad citizen participation in its regional work;

G. Evidence of consideration of the demographic diversity within the region; and,

H. Evidence of adequate funding support to disadvantaged communities.

A Great Regions project should be designed to help rural communities in the region create prosperity so they are self-sustaining, repopulating and economically thriving. A Great Region application focusing on one or more of the following key strategies may be eligible for additional discretionary points in the application scoring as outlined in the selection criterion in 7 CFR 4284.639(f).:

1. *Local and regional food systems that encourage agriculture and related industries in new wealth creation*—Section 6015 of the Food, Conservation, and Energy Act of 2008 (Farm Bill) defines "locally or regionally produced agricultural food products" to be any agricultural food product that is raised, produced, and distributed in:

(I) The locality or region in which the final product is marketed, so that the total distance that the product is transported is less than 400 miles from the origin of the product; or (II) the State in which the product is produced.

Local or regional food systems are the infrastructure behind locally or regionally produced agricultural food products*. This includes both the land, buildings, equipment, professional services such as veterinary care or crop consulting, and feed, seed, fertilizer and other inputs necessary to produce the crops and livestock leading to these food products and the harvesting, transportation, processing, storage, handling, distribution, and retail networks required to give consumers real access to locally or regionally produced food products. Best practice projects should acknowledge the role of producers and consumers, individually or collectively, including through the creation of new or expansion of existing cooperatives.

*(This definition is included for informational purposes only and Applicants should not be constrained by it in formulating their geographic boundaries for RBOG application purposes.)

2. *Renewable energy generation and energy conservation as strategies for quality job creation as well as climate change reduction and mitigation*—As America turned from the 19th to the 20th Century, rural areas provided much of the workforce and natural resources that powered the Industrial Revolution. While those jobs created prosperity in rural communities, they often came at the price of worker health and the quality of water, air, and soil in the region. As new technologies emerge to create power and fuels from renewable sources, rural Americans look forward to new opportunities to harness the sun that shines on the desert Southwest, the wind that sweeps across the heartland, and to turn agricultural wastes and by-products into power and fuel sources for generations to come. But, from manufacturing photovoltaic films to repairing wind turbines to mastering biomass crop production, harvesting, and storage, realizing those opportunities requires workforce recruitment and development.

There are similar job opportunities in energy conservation, from conducting energy audits for farmers and other rural business owners to jobs in the home improvement business reducing home heating and cooling costs. As is often the case in rural areas, though, sparse population can make entrepreneurship difficult to support.

Best practice projects in this area will demonstrate rural/urban connections and explore the interface of Federal and State level incentives with permitting and regulatory frameworks.

3. *Access to broadband and other critical infrastructure as a strategy for facilitating local entrepreneurship and attracting people into rural areas*—The Rural Utilities Service, another of the agencies forming the Rural Development mission area, has been financing expansion of electricity into rural areas since 1935 and telecommunications since 1949. In both the Farm Bill and the American Recovery and Reinvestment Act, Congress modernized USDA's telecommunications mission by providing Rural Utilities Service with tools to expand access to broadband in rural areas. Availability of high-speed Internet access has become one of the factors Americans consider in choosing where to live, along with the availability of clean water, sanitary sewer systems, and the quality and availability of housing, schools, and other essential community facilities. Over its 75-year history, Rural Utilities Service and its predecessor, the Rural Electrification Administration, have improved the quality of life for millions of rural Americans and made modern commerce possible. However, it is not enough to make fiber-optic cable, wireless services, or even satellite capability available to rural communities. For the economic promise of broadband technologies to be realized, they must be used. Buyers and sellers must be able to find each other quickly and easily anywhere and anytime. Health care and other service providers must use available technology to improve the quality of the services they offer. Employers must use available technology to recruit, train, and retain a modern workforce. As changes in whole sectors of the American economy—from wood products to automotive parts to the poultry industry—ripple through supply chains in rural communities, broadband access offers hope for new markets and new economic opportunities, but only if it is used.

4. *Access to capital in rural areas as a strategy to ensure continuous business development and job creation/retention*—Like all business owners, rural entrepreneurs need access to capital to start or expand their businesses. And, like all business owners, rural entrepreneurs have two basic choices when they need to raise capital: Debt financing through a loan or equity financing through selling a stake in the business to investors. But, these tools have not been as readily available in many rural areas as they have been in more metropolitan areas, even when the overall economy was very strong.

The Agency offers a variety of tools designed to make debt financing more available and more affordable, such as capitalizing locally-controlled revolving loan funds through the Intermediary Relending Program and reducing lender risk to make more favorable rates and terms possible for business owners through the Business & Industry Loan Guarantee Program. However, the Farm Bill authorized only one equity

financing program, the Rural Business Investment Program (Section 6027), and no funding has been requested or appropriated. The Agency is particularly interested in recruiting best practice projects that identify alternative and replicable equity sources, such as community-based organizations, private foundations or networks of private investors willing to focus on rural economic and community development.

5. *Innovative utilization of natural resources as a strategy to expand business opportunities*—Creative integration of local natural resources can result in multiple avenues for new or enhanced economic activity that will increase rural wealth. For example, forest resources can be used to encourage eco-tourism resulting in increased demand for businesses to provide supporting services or private pasture land can be used for hunting. If a region becomes known for its unique features, it can create additional sources of income by promoting itself as a destination. Once there, visitors can support businesses such as art galleries, spas, *etc.*

The Agency is particularly interested in recruiting best practice projects that identify alternative and replicable innovations of natural resource projects as strategies for long term economic development. In addition, within the key strategy categories, the Agency is also interested in applications that integrate economically and environmentally sustainable methods of growth, in particular in transportation, housing, and economic development.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2010.

Total Funding: $7.48 million.

Approximate Number of Awards: 30.

Maximum Award: $250,000, except as otherwise specifically provided herein.

Anticipated Award Date: September 15, 2010.

Specially designated places: Tribal lands, Rural Economic Area Partnership (REAP) Zones.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to public bodies, nonprofit corporations, Indian Tribes on Federal or State reservations and other Federally-recognized Tribal groups, and cooperatives with members who are primarily rural residents and that conduct activities for the mutual benefit of the members.

B. Cost Sharing or Matching

Matching funds are not required; however, regulatory selection criteria encourage applications that leverage Federal funds.

C. Other Eligibility Requirements

The purpose of the RBOG program is to facilitate sustainable economic development opportunities for rural people.

D. Completeness Eligibility

Applications must be complete to be considered for FY 2010 funding. The required elements of a complete application are in the RBOG program regulations at 7 CFR Part 4284, Subpart G. Copies of the regulations are available from Rural Development State Offices or can be obtained online from the Rural Development Web site: *http://www.rurdev.usda.gov/regs/regs_toc.html.*

IV. Fiscal Year 2010 Application and Submission Information

A. Address To Request Application Package

Applicants should contact the Rural Development State Office serving the State, territory, or Tribal lands in which the project, or the majority of the project, would be physically located. Contact information for Rural Development State Offices is listed above.

Applications may be submitted in paper format; however, applicants are encouraged to submit applications through the Grants.gov Web site at *http://www.grants.gov.* Applications will not be accepted by electronic mail.

The Grants.gov Web site provides all necessary information about how to submit an electronic application through the Web site as well as the hours of operation. Users of Grants.gov will be able to download a copy of the full application package, complete it offline, and then upload and submit the application and all necessary assurances and certifications via the Grants.gov Web site. In addition:

- Applicants are strongly encouraged not to wait until the final day of application acceptance to begin the Grants.gov process;
- In the event of technical difficulties on the final day of application acceptance, an applicant may choose to submit a paper application instead; however, the application must be received by the respective Rural Development State Office by 4 p.m. on June 28, 2010;
- Applicants must have a Dunn and Bradstreet Universal Numbering System (DUNS) number. A DUNS number can be obtained at no cost by calling toll-free 1–866–705–5711 or online at: *http://fedgov.dnb.com/webform;*
- Applicants submitting through the Grants.gov Web site will receive an automatic acknowledgement of the submission containing a Grants.gov tracking number;
- The Agency may request that an applicant provide original signatures on forms at a later date; and
- Applicants can locate the downloadable application package for the RBOG program on the Grants.gov Web site by using the Catalog of Federal Domestic Assistance Number, which is 10.773, or by searching the FedGrants Funding Opportunity Number, which can be found at *http://www.fedgrants.gov.*

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management Budget (OMB) under OMB Control Number 0570–0024.

B. Content and Form of Submission

An application must be consistent with the statutory requirements of the RBOG program, found in 7 U.S.C. 1926(a)(11), as amended. In addition, an application must contain all of the required elements articulated in the RBOG regulations, found at 7 CFR part 4284, subpart G. Each selection criterion outlined in 7 CFR 4284.639 must be addressed in the application. Failure to address any of the criteria will result in a zero point score for that criterion and will impact the overall evaluation of the application. Copies of pertinent provisions of the regulations can be obtained from a Rural Development State Office listed above or can be obtained electronically from the Rural Development Web site: *http://www.rurdev.usda.gov/regs/regs_toc.html.*

C. Submission Dates and Times

Application Deadline: Completed applications for these funds must be received by the respective Rural Development State Office no later than 4 p.m. on June 28, 2010 for grant funding. Any applications received after that time will not be considered for FY 2010 funding; however, the Agency reserves the right to extend the application deadline.

Application pre-review: Prospective applicants may submit an application for an informal eligibility pre-review no later than April 28, 2010. The pre-review is intended to provide feedback to the prospective applicant, but is not binding on the Agency.

V. Application Review Information

The National Office will score applications based on the grant

selection criteria and point scores contained in 7 CFR part 4284, subpart G and will select a grantee subject to the grantee's satisfactory submission of any additional items required by 7 CFR part 4284, subpart G and the RBS Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applicants will receive notification, including mediation procedures and appeal rights, by mail.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in the RBOG regulations, contained in 7 CFR part 4284, subpart G. This regulation may be obtained at: *http://www.access.gpo.gov/nara/cfr/page1.*

VII. Agency Contacts

For general questions about how to apply or to receive an application package, please contact the Rural Development State Office serving the State or territory where the project, or a majority of the project, would be located.

For specific questions about multi-jurisdictional "Great Region" applications or information about other programs or agencies in USDA, please call 202–720–7558.

Nondiscrimination Statement

"The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or part of an individual's income is derived from any public assistance program. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, *etc.*) should contact USDA's TARGET Center at 202–720–6382 (TDD). To file a complaint of discrimination, write to USDA, Director, Office of Adjudication and Compliance, 1400 Independence Avenue, SW, Washington, DC 20250–9410, or call 800–795–3272 (voice), or 202–720–6382 (TDD). USDA is an equal opportunity provider, employer, and lender."

Appeal Process

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are appealable pursuant to 7 CFR part 11. Instructions on the appeal process will be provide at the time an applicant is notified of the adverse decision.

Dated: February 18, 2010.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2010–6860 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Montana Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Beaverhead-Deerlodge National Forest's Southwest Montana Resource Advisory Committee will meet on Monday April 19, 2010, from 1 p.m. until 4 p.m., in Dillon, Montana. The purpose of the meeting is to review funding proposals for Title II funding.

DATES: Monday, April 19, 2010, from 1 p.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Beaverhead-Deerlodge Forest Head quarters located at 420 Barrett Street, Dillon, Montana (MT 59725).

FOR FURTHER INFORMATION CONTACT: Patty Bates, Committee Coordinator, Beaver head-Deerlodge National Forest, 420 Barrett Road, Dillon, MT 59725 (406) 683–3979; e-mail *pbates@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda for this meeting include discussion about (1) Orientation to the reauthorized legislation; (2) Purpose of the Secure Rural Schools Act; (3) Roles and responsibilities of the Southwest Montana RAC; (3) Election of Conmiittee Chairperson; (4) Meeting structure, processes and agendas; (5) Budget; and (6) Project solicitation. The meeting is open to the public. Time for public input will be provided and individuals will have the opportunity to address the Committee.

Dated: March 18, 2010.

David R. Myers,

Designated Federal Official.

[FR Doc. 2010–6743 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Okanogan and Wenatchee National Forests Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Wenatchee-Okanogan Resource Advisory Committee will meet on May 5, May 13, and May 20 at the Okanogan-Wenatchee National Forest Headquarters Office, 215 Melody Lane, Wenatchee, WA. These meetings will begin at 9 a.m. and continue until 3 p.m. On May 5, committee members will review Kittitas County projects, on May 13, committee members will review Okanogan County projects, and on May 20, committee members will review Chelan County and Yakima County projects proposed for Resource Advisory Committee consideration under Title II of the Secure Rural Schools and Community Self-Determination Act of 2000.

All Wenatchee-Okanogan Resource Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Robin DeMario, Public Affairs Specialist, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, (509) 664–9200.

Dated: March 23, 2010.

Clinton Kyhl,

Okanogan-Wenatchee National Forest, Forest Supervisor.

[FR Doc. 2010–6869 Filed 3–26–10; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Licensing Exemptions and Exclusions.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 14,576.

Number of Respondents: 2,182.

Average Hours per Response: 15 minutes to 60 hours.

Needs and Uses: This collection of information will consolidate ten existing BIS information collections into one new collection. All of these existing collections implement export licensing exceptions or exclusions in which an exporter may chose to exchange a requirement to obtain an individual validated export license with a reporting and/or recordkeeping requirement. These exclusions and exceptions are designed to reduce burden in approved collection, OMB Control No. 0694–0088 "Simplified Network Application Process and Multipurpose Application Form." The existing collection authorities that are being consolidated are—OMB Control Nos.

1. 0694–0023—Written Assurances for Exports of Technical Data under License Exception TSR.

2. 0694–0025—Short Supply—Unprocessed Western Red Cedar.

3. 0694–0029—License Exception TMP: Special Requirements.

4. 0694–0033—Humanitarian Donations.

5. 0694–0086—Report of Sample Shipments of Chemical Weapons Precursors.

6. 0694–0101—One-time Report For Foreign Software or Technology Eligible For De Minimis Exclusion.

7. 0694–0104—Commercial Encryption Items under the Jurisdiction of the Department of Commerce.

8. 0694–0106—Recordkeeping Requirements under the Wassenaar Arrangement.

9. 0694–0123—Prior Notification of Exports under License Exception AGR.

10. 0694–0133—Thermal Imaging Camera Reporting.

The consolidation of these collections will reduce the cost of renewing 10 individual collections every three years and also make it easier to add additional exclusions and exceptions as revisions to an existing collection. BIS will discontinue the ten collections when this new collection is authorized.

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, by e-mail to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–5167.

Dated: March 23, 2010.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2010–6822 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–806]

Silicon Metal From the People's Republic of China: Notice of Amended Final Results of New Shipper Reviews Pursuant to Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* March 29, 2010.

SUMMARY: On May 5, 2009, the Court of International Trade ("CIT") affirmed the Department's remand determination issued pursuant to the Court's remand order in *Globe Metallurgical, Inc.* v. *United States,* Court No. 07–00386, Slip Op. 08–105 (CIT October 1, 2008) ("*Remand Order*"), which concerned the Department of Commerce's ("the Department") determination of the appropriate surrogate value for silica fume in *Silicon Metal From the People's Republic of China: Notice of Final Results of 2005/2006 New Shipper Reviews,* 72 FR 58,641 (October 16, 2007) ("*Final Results*") and accompanying Issues and Decision Memorandum. *See Globe Metallurgical, Inc.* v. *United States,* Court No. 07–00386, Slip Op. 09–137 (CIT May 5, 2009) ("*May 5th Order*"). On February 23, 2010, the Court of Appeals for the Federal Circuit ("CAFC") dismissed the appeal of *Globe Metallurgical, Inc.* v. *United States,* Court No. 2009–1436 ("*Dismissal Order*"). As explained below, in accordance with the CIT's *May 5th Order* and the CAFC's *Dismissal Order,* the Department is amending the *Final Results* of the new shipper reviews to apply the recalculated surrogate value for the by-product silica fume in the Department's normal value calculation.

FOR FURTHER INFORMATION CONTACT: Jerry Huang or Scot T. Fullerton, AD/CVD Operations, Office 9, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 4017, Washington, DC 20230; telephone: (202) 482–4047 or (202) 482–1386, respectively.

SUPPLEMENTARY INFORMATION:

Background

This matter arose from a challenge to the *Final Results* issued by the Department on October 16, 2007, for the period of review of June 1, 2005, through May 31, 2006. Following publication of the *Final Results,* Petitioner, Globe Metallurgical, Inc., and Respondents [1] filed lawsuits with the CIT challenging several aspects of the Department's *Final Results.* The cases were subsequently consolidated. On October 1, 2008, the CIT issued its opinion, in which it upheld the *Final Results* on all counts except for the surrogate value of silica fume. The CIT remanded the case to the Department to obtain better information for valuing silica fume or to use information on the record that relates specifically to the by-product silica fume. *See Remand Order* at 14.

On October 9, 2008, the Department reopened the administrative record to allow interested parties an opportunity to provide additional information for use in valuing silica fume. Petitioner and Respondents submitted comments on October 16, 2008, and rebuttal comments on October 24, 2008. On December 23, 2008, the Department released its draft remand results using a revised surrogate value for silica fume based on a subset of World Trade Atlas ("WTA") Indian import statistics for silicon dioxide from silicon metal or ferrosilicon producing countries. On January 9, 2009, the Department received comments on the draft remand results from Petitioner. On January 14, 2009, the Department received rebuttal comments from Respondents.

On February 2, 2009, the Department submitted its final remand results to the CIT. *See Final Results of Redetermination Pursuant to Court Remand,* Court No. 07–00386 (Feb. 2, 2009). On May 5, 2009, the CIT issued its ruling and sustained the

[1] Respondents referenced here are (1) Jiangxi Gangyuan Silicon Industry Co., Ltd. ("Jiangxi Gangyuan"); and (2) Shanghai Jinneng International Trade Co., Ltd. ("Shanghai Jinneng") and its affiliated producer Datong Jinneng Industrial Silicon Co., Ltd. ("Datong Jinneng").

Department's remand results. *See May 5th Order* at 2. The CIT found that the Department's new surrogate value for silica fume was more specific to silica fume, as required by the *Remand Order,* and was supported by substantial evidence.

On July 1, 2009, Respondents filed an appeal with the CAFC. On February 23, 2010, the CAFC dismissed the case, pursuant to Respondents' withdrawal of their appeal.

Amendment to the Final Determination

Because there is now a final and conclusive court decision, effective as of the publication date of this notice, we are amending the *Final Results* and revising the weighted average dumping margins for Jiangxi Gangyuan and Shanghai Jinneng:

SILICON METAL FROM THE PRC

Manufacturer/exporter	Weighted-average margin
Jiangxi Gangyuan	71.57%
Datong Jinneng/Shanghai Jinneng	50.41

We have calculated Jiangxi Gangyuan and Shanghai Jinneng's company-specific antidumping margin as 71.57% and 50.41%, respectively. See Memorandum to the File from Jerry Huang, "Analysis Memorandum for the Final Results of the Redetermination of the Silica Fume By-Product Valuation, Remand for Antidumping Duty New Shipper Review of Silicon Metal From the People's Republic of China for Datong Jinneng Industrial Silicon Co., Inc./Shanghai Jinneng International Trade Co., Ltd.," and Memorandum to the File From Jerry Huang, "Analysis Memorandum for the Final Results of the Redetermination of the Silica Fume By-Product Valuation, Remand for Antidumping Duty New Shipper Review of Silicon Metal From the People's Republic of China for Jiangxi Gangyuan Silicon Industry Co., Ltd.," both dated February 2, 2009. There have been no changes to this analysis for these amended final results. In accordance with the Department's practice of applying importer-specific assessment rates, we will instruct United States Customs and Border Protection ("CBP") to apply the importer-specific assessment rate for Jiangxi Gangyuan and Shanghai Jinneng's exports to the United States. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the publication of the final results of this review.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: March 23, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–6896 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1671]

Approval for Processing Authority, Foreign–Trade Zone 196, ATC Logistics & Electronics (Personal Navigation Devices), Fort Worth, Texas

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, ATC Logistics & Electronics, an operator of Foreign–Trade Zone 196, has requested processing authority within FTZ 196 in Fort Worth, Texas (FTZ Docket 38–2009, filed 9/16/2009);

Whereas, notice inviting public comment has been given in the **Federal Register** (74 FR 49364, 9/28/2009) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby orders:

The application for processing authority under zone procedures within FTZ 196, as described in the application and **Federal Register** notice, is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 12th day of March 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–6901 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Minority Business Development Agency

Notice of the Establishment of a National Advisory Council on Minority Business Enterprise and the Solicitation of Nominations for Membership

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration, the Department of Commerce is announcing the establishment of the National Advisory Council on Minority Business Enterprise (NACMBE). Pursuant to this notice, the Department of Commerce is also soliciting nominations for membership on the NACMBE for the upcoming 2-year charter term beginning in April 2010. The purpose of the NACMBE is to advise the Secretary of Commerce (Secretary) on key issues pertaining to the growth and competitiveness of the nation's Minority Business Enterprises (MBEs).

DATES: Complete nomination packages for NACMBE membership must be received by the Department of Commerce on or before May 3, 2010, at 5 p.m. Eastern Daylight Time (EDT).

ADDRESSES: Nomination packages may be submitted through the mail or may be submitted electronically. Interested persons are encouraged to submit nominations electronically. The deadline is the same for nominations submitted through the mail and for nominations submitted electronically.

1. *Submission by Mail:* Nominations sent by mail should be addressed to the U.S. Department of Commerce, Minority Business Development Agency, Office of Legislative, Education and Intergovernmental Affairs, Attn: Stephen Boykin, 1401 Constitution Avenue, NW., Room 5063, Washington, DC 20230. Applicants are advised that the Department of Commerce's receipt of mail sent via the United States Postal Service may be substantially delayed or suspended in delivery due to security measures. Applicants may therefore wish to use a guaranteed overnight delivery service to ensure nomination packages are received by the Department of Commerce by the deadline set forth in this notice.

2. *Electronic Submission:* Nomination sent electronically should be addressed to: NACMBEnominations@mbda.gov.

Please include "NACMBE Nomination" in the title of the e-mail.

FOR FURTHER INFORMATION CONTACT: Stephen Boykin, MBDA Office of Legislative, Education and Intergovernmental Affairs, at (202) 482–1712 or by e-mail at: *NACMBEnominations@mbda.gov.*

SUPPLEMENTARY INFORMATION:

Background: Pursuant to Executive Order 11625, as amended, the Department of Commerce, through the Minority Business Development Agency (MBDA), is charged with promoting the growth and competitiveness of the nation's minority business enterprise. NACMBE is being established in the Department of Commerce as a discretionary advisory committee in accordance with the provisions of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. 2, and with the concurrence of the General Services Administration. The NACMBE will be administered primarily by MBDA.

MBEs make a substantial contribution to the U.S. economy, generating $661 billion in total gross receipts in 2002 and employing approximately 4.7 million people with an annual payroll totaling $115 billion. This represented only 7.5 percent of the total gross receipts generated by all U.S. businesses (excluding publicly-held firms), notwithstanding that in 2002 the adult minority population represented 29 percent of the total U.S. adult population. However, if MBEs were to generate total gross receipts in relation to the current minority population, the U.S. economy would benefit from an estimated additional $1.8 trillion in annual gross receipts and 11.4 million new jobs. MBEs also have the potential to contribute significantly to the balance of trade as they are twice as likely to generate sales through exports compared to non-minority firms.

Obstacles such as access to capital, access to markets and access to business and social networks, all of which are essential for any businesses to increase in size and scale, continue to impede the growth and competiveness of MBEs. Unless these obstacles are addressed, the MBE community will continue to lag behind their non-minority counterparts undermining the nation's ability to regain its economic footing and to build a sustainable economy.

Objectives and Scope of Activities: NACMBE will advise the Secretary on key issues pertaining to the growth and competitiveness of the nation's MBEs, as defined in Executive Order 11625, as amended, and 15 CFR 1400.1. NACMBE will provide advice and recommendations on a broad range of policy issues that affect minority businesses and their ability to successfully access the domestic and global marketplace. These policy issues may include, but are not limited to:

- Methods for increasing jobs in the health care, manufacturing, technology, and "green" industries;
- Global and domestic barriers and impediments;
- Global and domestic business opportunities;
- MBE capacity building;
- Institutionalizing global business curriculums at colleges and universities and facilitating the entry of MBEs into such programs;
- Identifying and leveraging pools of capital for MBEs;
- Methods for creating high value loan pools geared toward MBEs with size, scale and capacity;
- Strategies for collaboration amongst minority chambers, trade associations and nongovernmental organizations;
- Accuracy, availability and frequency of economic data concerning minority businesses;
- Methods for increasing global transactions with entities such as but not limited to the Export-Import Bank, OPIC and the IMF; and
- Requirements for a uniform and reciprocal MBE certification program.

The advice and recommendations provided by NACMBE may take the form of one or more written reports. NACMBE will also serve as a vehicle for an ongoing dialogue with the MBE community and with other stakeholders.

The Secretary has determined that the establishment of NACMBE is necessary and in the public interest in connection with MBDA's duties and responsibilities in advancing the growth and competitiveness of MBEs pursuant to Executive Order 11625, as amended.

Membership: NACMBE shall be composed of not more than 25 members. The NACMBE members shall be distinguished individuals from the nonfederal sector appointed by the Secretary. The members shall be recognized leaders in their respective fields of endeavor and shall possess the necessary knowledge and experience to provide advice and recommendations on a broad range of policy issues that impact the ability of MBEs to successfully participate in the domestic and global marketplace. NACMBE shall have a balanced membership reflecting a diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

NACMBE members shall be appointed as Special Government Employees for a two-year term and shall serve at the pleasure of the Secretary. Members may be re-appointed to additional two-year terms, without limitation. The Secretary may designate a member or members to serve as the Chairperson or Vice-Chairperson(s) of NACMBE. The Chairperson or Vice-Chairperson(s) shall serve at the pleasure of the Secretary.

NACMBE members will serve without compensation, but will be allowed reimbursement for reasonable travel expenses, including a per diem in lieu of subsistence, as authorized by 5 U.S.C. 5703, as amended, for persons serving intermittently in Federal government service. NACMBE members will serve in a solely advisory capacity.

Eligibility. In addition to the above criterion, eligibility for NACMBE membership is limited to U.S. citizens who are not full-time employees of the Federal Government, are not registered with the U.S. Department of Justice under the Foreign Agents Registration Act and are not a Federally-registered lobbyists pursuant to the Lobbying Disclosure Act of 1995, as amended, at the time of appointment to the NACMBE.

Nomination Procedures and Selection of Members: The Department of Commerce is accepting nominations for NACMBE membership for the upcoming 2-year charter term beginning in April 2010. Members shall serve until the NACMBE charter expires in April 2012, although members may be re-appointed by the Secretary without limitation. Nominees will be evaluated consistent with the factors specified in this notice and their ability to successfully carryout the goals of the NACMBE.

For consideration, a nominee must submit the following materials: (1) Resume, (2) personal statement of interest, including a summary of how the nominee's experience and expertise would support the NACMBE objectives; (3) an affirmative statement that the nominee is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended, and (4) an affirmative statement that: (a) The nominee is not currently a Federally-registered lobbyist and will not be a Federally-registered lobbyist at the time of appointment and during his/her tenure as a NACMBE member, or (b) if the nominee is currently a Federally-registered lobbyist, that the nominee will no longer be a Federally-registered lobbyist at the time of appointment to the NACMBE and during his/her tenure as a NACMBE member. All nomination information should be provided in a single, complete package by the deadline specified in this notice. Nominations packages should be

submitted by either mail or electronically, but not by both methods. Self-nominations will be accepted.

NACMBE Members will be selected in accordance with applicable Department of Commerce guidelines and in a manner that ensures that NACMBE has a balanced membership. In this respect, the Secretary seeks to appoint members who represent a diversity of industries, ethnic backgrounds and geographical regions, and to the extent practicable, gender and persons with disabilities.

All appointments shall be made without discrimination on the basis of age, ethnicity, gender, disability, sexual orientation, or cultural, religious, or socioeconomic status. All appointments shall also be made without regard to political affiliations.

Dated: March 23, 2010.

David A. Hinson,

National Director, Minority Business Development Agency.

[FR Doc. 2010–6969 Filed 3–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

[Order No. 1670]

Expansion of Foreign–Trade Zone 26, Atlanta, Georgia, Area

Pursuant to its authority under the Foreign–Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign–Trade Zones Board (the Board) adopts the following Order:

Whereas, the Georgia Foreign–Trade Zone, Inc., grantee of Foreign–Trade Zone 26, submitted an application to the Board for authority to expand its zone to add proposed Site 18 in the Atlanta, Georgia, area, within the Atlanta Customs and Border Protection port of entry (FTZ Docket 55–2008, filed 10/6/08);

Whereas, notice inviting public comment was given in the **Federal Register** (73 FR 60676–60677, 10/14/08; correction, 73 FR 63675, 10/27/08) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendation of the examiner's report (including addendum), and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the approval of proposed Site 18 is in the public interest;

Now, therefore, the Board hereby orders:

The application to expand FTZ 26 to add proposed Site 18 is approved, subject to the FTZ Act and the Board's regulations, including Section 400.28, and to the Board's standard 2,000–acre activation limit for the overall general–purpose zone project, and further subject to a sunset provision that would terminate authority on March 31, 2015, if no activity under FTZ procedures has occurred at Site 18 before that date.

Signed at Washington, DC, this 12th day of March 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration, Alternate Chairman, Foreign–Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2010–6897 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–895]

Certain Crepe Paper Products From the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* March 29, 2010.

SUMMARY: On December 1, 2009, the Department of Commerce ("Department") initiated a sunset review of the antidumping duty order on certain crepe paper products from the People's Republic of China ("PRC"). On the basis of a timely notice of intent to participate, and an adequate substantive response filed on behalf of the domestic interested party, as well as a lack of response from respondent interested parties, the Department conducted an expedited sunset review. As a result of the sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

FOR FURTHER INFORMATION CONTACT: Alexis Polovina, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; *telephone:* (202) 482–3927.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2009, the Department published the notice of initiation of the sunset review of the antidumping duty order on crepe paper products from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). *See Initiation of Five-Year ("Sunset") Review,* 74 FR 62748 (December 1, 2009). On December 3, 2009, the Department received a notice of intent to participate from a domestic producer, Seaman Paper Company of Massachusetts ("Seaman Paper," "domestic interested party," or "Petitioner"). Submission of the notice of intent to participate filed by Petitioner was within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested party claimed interested party status under section 771(9)(C) of the Act, as Seaman Paper is a domestic manufacturer of crepe paper products in the United States. On December 31, 2009, the Department received a substantive response from the domestic interested party within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We did not receive responses from any respondent interested parties to this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of the order.

As explained in the memorandum from the Deputy Assistant Secretary for Import Administration, the Department has exercised its discretion to toll deadlines for the duration of the closure of the Federal Government from February 5, through February 12, 2010. Thus, all deadlines in this segment of the proceeding have been extended by seven days. The revised deadline for the final of this expedited review is now April 7, 2010. *See* Memorandum to the Record from Ronald Lorentzen, DAS for Import Administration, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During the Recent Snowstorm," dated February 12, 2010.

Scope of the Order

For purposes of the order, the term "certain crepe paper" includes crepe paper products that have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe

paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to the order may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles. The merchandise subject to the order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States ("HTSUS"). Subject merchandise may be under one or more of several different HTSUS subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Deputy Assistant Secretary for Import Administration, dated March 23, 2010, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit in room 1117 of the main Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the web at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the antidumping duty order on crepe paper from the PRC would be likely to lead to continuation or recurrence of dumping at the following percentage margins:

Manufacturers/exporters/producers	Margin (percent)
Fuzhou Light Industry Import and Export Co., Ltd.	266.83
Fuzhou Magicpro Gifts Co., Ltd.	266.83
Everlasting Business and Industry Co. Ltd.	266.83
Fujian Nanping Investment and Enterprise Co., Ltd.	266.83
Ningbo Spring Stationary Co., Ltd.	266.83
PRC–Wide	266.83

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: March 23, 2010.

Ronald K. Lorentzen,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 2010–6892 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–801]

Certain Frozen Fish Fillets From the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 29, 2010.

SUMMARY: The Department of Commerce ("Department") has determined that two requests for a new shipper review ("NSR") of the antidumping duty order on certain frozen fish fillets ("fish fillets") from the Socialist Republic of Vietnam ("Vietnam"), received on February 19, 2010, and February 24, 2010, meet the statutory and regulatory requirements for initiation. The period of review ("POR") for the two NSRs is August 1, 2009, through February 15, 2010.

FOR FURTHER INFORMATION CONTACT: Emeka Chukwudebe, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: 202–482–0219.

SUPPLEMENTARY INFORMATION:

Background

The notice announcing the antidumping duty order on fish fillets from Vietnam was published in the **Federal Register** on August 12, 2003. *See Notice of Antidumping Duty Order: Certain Frozen Fish Fillets From the Socialist Republic of Vietnam*, 68 FR 47909 (August 12, 2003) ("*Antidumping Duty Order*"). On February 19, 2010, and on February 24, 2010, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended ("Act"), and 19 CFR 351.214(c), the Department received two NSR requests from Thien Ma Seafood Company, Ltd. ("Thien Ma") and International Development & Investment Corporation ("IDI"), respectively. Thien Ma and IDI's requests were properly made during February 2010, which is the semi–annual anniversary of the *Antidumping Duty Order*. In response to inquiries from the Department, Thien Ma and IDI also submitted amendments to their initial NSR requests on March 17, 2010, and March 19, 2010, respectively. In this instance, IDI's sale of subject merchandise was made during the POR specified by the Department's regulations but the shipment entered within 15 days after the end of the POR. The Department finds that extending the POR to capture this entry would not prevent the completion of the review within the time limits set by the Department's regulations. Therefore, the Department has extended the POR for the new shipper review of IDI by 15 days. Thien Ma and IDI certified that they are both the producer and exporter of the subject merchandise upon which the requests were based. Thien Ma and IDI also submitted public versions of their requests, which adequately summarized proprietary information and provided explanations as to why certain proprietary information is not capable of summarization.

Pursuant to section 751(a)(2)(B)(i)(I) of the Act and 19 CFR 351.214(b)(2)(i), Thien Ma and IDI certified that they did not export subject merchandise to the United States during the period of investigation ("POI"). In addition, pursuant to section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(b)(2)(iii)(A), Thien Ma and IDI certified that, since

the initiation of the investigation, they have never been affiliated with any Vietnamese exporter or producer who exported subject merchandise to the United States during the POI, including those respondents not individually examined during the investigation. As required by 19 CFR 351.214(b)(2)(iii)(B), Thien Ma and IDI also certified that their export activities were not controlled by the central government of Vietnam.

In addition to the certifications described above, pursuant to 19 CFR 351.214(b)(2)(iv), Thien Ma and IDI submitted documentation establishing the following: (1) the date on which Thien Ma and IDI first shipped subject merchandise for export to the United States and; (2) the volume of their first shipment; and (3) the date of their first sale to an unaffiliated customer in the United States.

The Department conducted U.S. Customs and Border Protection ("CBP") database queries in an attempt to confirm that Thien Ma and IDI's shipments of subject merchandise had entered the United States for consumption and that liquidation of such entries had been properly suspended for antidumping duties. The Department also examined whether the CBP data confirmed that such entries were made during the NSR POR. The information we examined was consistent with that provided by Thien Ma and IDI.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the "Act") and 19 CFR 351.214(d)(1), we find that the requests submitted by Thien Ma and IDI meet the threshold requirements for initiation of a new shipper review for shipments of fish fillets from Vietnam produced and exported by Thien Ma and IDI. *See* "Memorandum to the File From Emeka Chukwudebe, Case Analyst, New Shipper Initiation Checklist: Certain Frozen Fish Fillets From Vietnam (A–552–801)," dated concurrently with this notice. The POR is August 1, 2009, through January 31, 2010. *See* 19 CFR 351.214(g)(1)(i)(B). The Department intends to issue the preliminary results of this NSR no later than 180 days from the date of initiation, and the final results no later than 270 days from the date of initiation. *See* section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non–market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country–wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Thien Ma and IDI, which will include a section requesting information with regard to Thien Ma and IDI's export activities for separate rates purposes. The review will proceed if the response provides sufficient indication that Thien Ma and IDI are not subject to either de jure or de facto government control with respect to its export of subject merchandise.

We will instruct U.S. Customs and Border Protection to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for each entry of the subject merchandise from Thien Ma and IDI in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Because Thien Ma and IDI certified that they both produced and exported the subject merchandise, the sale of which is the basis for this new shipper review request, we will apply the bonding privilege to Thien Ma and IDI only for subject merchandise which Thien Ma and IDI both produced and exported.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 19 CFR 351.306. This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 19 CFR 351.221(c)(1)(i).

Dated: March 23, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–6898 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[PTO–C–2010–0033]

Public Advisory Committees

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act (the "Act"), Public Law 106–113, which, among other things, established two Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee, and with respect to trademarks, in the case of the Trademark Public Advisory Committee, and to advise the Director on these matters (now codified at 35 U.S.C. 5). The USPTO is requesting nominations for three (3) members to each Public Advisory Committee for terms of three years that begin from date of appointment.

DATES: Nominations must be postmarked or electronically transmitted on or before June 11, 2010.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resumé to Chief of Staff, Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450; by electronic mail to: *PPACnominations@uspto.gov* for the Patent Public Advisory Committee or *TPACnominations@uspto.gov* for the Trademark Patent Public Advisory Committee; by facsimile transmission marked to the Chief of Staff's attention at (571) 273–0464, or by mail marked to the Chief of Staff's attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450.

FOR FURTHER INFORMATION CONTACT: Andrew H. Hirshfeld, Chief of Staff, by facsimile transmission marked to his attention at (571) 273–0464, or by mail marked to his attention and addressed to the Office of the Under Secretary of Commerce for Intellectual Property and Director of the USPTO, Post Office Box 1450, Alexandria, Virginia 22313–1450.

SUPPLEMENTARY INFORMATION: The Advisory Committees' duties include:

- Review and advise the Under Secretary of Commerce for Intellectual Property and Director of the USPTO on matters relating to policies, goals, performance, budget, and user fees of the USPTO relating to patents and trademarks, respectively; and

- Within 60 days after the end of each fiscal year: (1) Prepare an annual report on matters listed above; (2) transmit a report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives; and (3) publish the report in the Official Gazette of the USPTO.

Advisory Committees

The Public Advisory Committees are each composed of nine (9) voting members who are appointed by the Secretary of Commerce (the "Secretary") and serve at the pleasure of the Secretary for three (3)-year terms. The Public Advisory Committee members must be United States citizens and represent the interests of diverse users of the USPTO, both large and small entity applicants in proportion to the number of such applications filed. The Committees must include members who have "substantial backgrounds and achievement in finance, management, labor relations, science, technology, and office automation." 35 U.S.C. 5(b)(3). In the case of the Patent Public Advisory Committee, at least twenty-five (25) percent of the members must represent "small business concerns, independent inventors, and nonprofit organizations," and at least one member must represent the independent inventor community. 35 U.S.C. 5(b)(2). Each of the Public Advisory Committees also includes three (3) non-voting members representing each labor organization recognized by the USPTO. Administration policy discourages the appointment of Federally registered lobbyists to agency advisory boards and commissions. Lobbyists on Agency Boards and Commissions, *http://www.whitehouse.gov/blog/2009/09/23/lobbyist-agency-boards-and-commissions* (Sept. 23, 2009, 2:33PM EST); cf. Exec. Order No. 13490, 74 FR 4673 (January 21, 2009) (while Executive Order 13490 does not specifically apply to Federally registered lobbyists appointed by agency or department heads, it sets forth the Administration's general policy of decreasing the influence of special interests in the Federal Government).

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each newly appointed member of the Patent and Trademark Public Advisory Committees will serve for a term of three years from date of appointment. As required by the Act, members of the Patent and Trademark Public Advisory Committees will receive compensation for each day while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of Title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by Section 5703 of Title 5, United States Code. The USPTO will provide the necessary administrative support, including technical assistance, for the Committees.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be Special Government Employees within the meaning of Section 202 of title 18, United States Code. The following additional information includes several, but not all, of the ethics rules that apply to members, and assumes that members are not engaged in Public Advisory Committee business more than sixty days during each calendar year:

- Each member will be required to file a confidential financial disclosure form within thirty (30) days of appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 U.S.C. 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. *See also* 18 U.S.C. 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 U.S.C. 208.
- Representation of foreign interests may also raise issues. 35 U.S.C. 5(a)(1) and 18 U.S.C. 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the Chair to consider an agenda set by the Chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel, privileged, or other confidential matters. Nominees must also have the ability to participate in Committee business through the Internet.

Procedures for Submitting Nominations

Submit resumés for nomination for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to: Chief of Staff to the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office, utilizing the addresses provided above.

Dated: March 23, 2010.

David J. Kappos

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2010–6900 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–917]

Laminated Woven Sacks from the People's Republic of China: Rescission of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is rescinding the administrative review of the countervailing duty order on laminated woven sacks (LWS) from the People's Republic of China (PRC) for the period December 3, 2007 to December 31, 2008, with respect to Zibo Aifudi Plastic Packaging Co., Ltd. (Zibo Aifudi). Since Zibo Aifudi was the only remaining producer/exporter subject to review, this notice also serves to rescind the entire administrative review. This rescission is based on Zibo Aifudi's withdrawal of its request for review.

EFFECTIVE DATE: March 29, 2010.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1391.

SUPPLEMENTARY INFORMATION:

Background

The Department published a notice of opportunity to request an administrative review of the countervailing duty order on LWS from the PRC. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 74 FR 41120 (August 14, 2009), as amended. Changshu Xinsheng Bags Producing Company Ltd. (Changshu) and Zibo Aifudi timely requested an administrative review of themselves under the countervailing duty order on LWS from the PRC for the period December 3, 2007 through December 31, 2008.[1]

[1] In accordance with the World Trade Organization Agreement on Subsidies and Countervailing Measures, entries of this

In accordance with Section 751 (a)(1) of the Tariff Act of 1930 (the Act) and 19 CFR 351.221(c)(1)(i), the Department published a notice initiating an administrative review of the countervailing duty order. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 48224 (September 22, 2009). Changshu subsequently withdrew its request, and the review of Changshu was rescinded on December 4, 2009. *See Laminated Woven Sacks From the People's Republic of China: Partial Rescission of Countervailing Duty Administrative Review*, 74 FR 63722 (December 4, 2009). On January 7, 2010, Zibo Aifudi withdrew its request for review. On January 22, 2010, petitioners (the Laminated Woven Sacks Committee and its individual members, Coating Excellence International, LLC and Polytex Fibers Corporation) filed comments objecting to a rescission of the administrative review.

Rescission of Countervailing Duty Administrative Review

The Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation. *See* 19 CFR 351.213(d)(1). However, this deadline may be extended if the Department finds it reasonable to do so. *See* 19 CFR 351.213(d)(1). Although Zibo Aifudi filed its request shortly after the 90-day deadline, the Department has not expended any resources yet in conducting this administrative review, other than issuing the questionnaire. Petitioners have argued that the Department should not rescind the review due to their concerns that Zibo Aifudi is improperly claiming that imports of LWS produced in, and exported from, the PRC are not subject to countervailing duties because they contain woven fabric produced outside of the PRC. However, petitioners' concerns can be addressed without conducting an administrative review of the countervailing duty order. We intend to address the issue raised by petitioners separately; interested parties will be notified concerning how the Department intends to address petitioners' claims.

Therefore, because there are no compelling reasons to continue conducting this administrative review, we are accepting Zibo Aifudi's withdrawal of its request for a countervailing duty administrative review, and since no other party requested a review, the Department is rescinding this administrative review of the countervailing duty order with respect to Zibo Aifudi. Since the review is now rescinded for all parties for which a review was requested, this notice also serves to rescind the entire administrative review of the countervailing duty order on LWS for the period December 3, 2007 through December 31, 2008.

Assessment

The Department will instruct CBP to assess countervailing duties on all appropriate entries. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after publication of this notice.

Notification Regarding Administrative Protective Order

This notice serves as a final reminder to parties subject to administrative protection orders (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, as amended, and 19 CFR 351.213(d)(4).

Dated: March 22, 2010.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2010–6899 Filed 3–26–10; 8:45 am]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 75 FR 57.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11 a.m., Friday, March 19, 2010.

CHANGES IN THE MEETING: The incorrect date was previously published. A meeting to discuss Surveillance matters will be held at 11 a.m. on Friday April 16, 2010.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,

Assistant Secretary of the Commission.

[FR Doc. 2010–7100 Filed 3–25–10; 4:15 pm]

BILLING CODE 6351–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meetings

TIME AND DATE: Wednesday, March 31, 2010, 9 a.m.–12 Noon.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission Meeting—Open to the Public.

Matter To Be Considered

1. *Pending Decisional Matter:* Definition of Children's Product—Notice of Proposed Rulemaking (NPR).

A live Web cast of the Meeting can be viewed at *http://www.cpsc.gov/webcast/index.html.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814 (301) 504–7923.

Dated: March 24, 2010.

Todd A. Stevenson,

Secretary.

[FR Doc. 2010–6943 Filed 3–25–10; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Intent To Grant Exclusive License of U.S. Patent Application No. 12/432,842 Filed April 30, 2009 Entitled: "A Soil Stabilization Soil Comprising Same, and a Method of Stabilizing Soil"

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: In accordance with 37 CFR 404.7(a)(1)(i), announcement is made of a prospective exclusive license of the following U.S. Patent Application No. 12/432,842 Filed April 30, 2009.

merchandise made on or after April 1, 2008 and before August 5, 2008 are not subject to countervailing duties.

DATES: Written objections must be filed not later than 15 days following publication of this announcement.

ADDRESSES: United States Army Engineer Research and Development Center, Waterways Experiment Station, *Attn:* CEERD–ZA–T (Mr. Phillip Stewart), 3909 Halls Ferry Road, Vicksburg, MS 39180–6199.

FOR FURTHER INFORMATION CONTACT: Mr. Phillip Stewart (601) 634–4113, FAX (601) 634–4180, *e-mail: Phillip.stewart@usace.army.mil.*

SUPPLEMENTARY INFORMATION: This invention has non-government co-inventors and this announcement pertains only to the licensing of the Federal Government's rights, not to the rights of the non-government inventors. The technology claimed in this patent application improves a soil's resistance to deformation, prevents complete rewetting of the soil which improves freeze-thaw resistance and durability, and reduces fugitive dust. This method of stabilization provides for immediate use with no curing time necessary and is particularly effective in extreme cold climates with sandy, gravelly soils where emulsions and hydraulic cements will not effectively cure. If damaged due to extreme traffic loads or numbers, the system may be reworked and re-compacted with no loss in effectiveness. It has been demonstrated to provide cost-savings in remote locations where importation of crushed aggregate to construct pavement is costly and impractical.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 2010–6886 Filed 3–26–10; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Army

Interim Change to the Military Freight Traffic Unified Rules Publication (MFTURP) NO. 1

AGENCY: Department of the Army, DoD.

SUMMARY: The Military Surface Deployment and Distribution Command (SDDC) is providing notice that it will release an interim change to the MFTURP No. 1 on March 29, 2010. The interim change updates Section A, Paragraph N, Fuel Surcharge, in accordance with Section 884 of the National Defense Authorization Act.

ADDRESSES: Submit comments to Publication and Rules Manager, Strategic Business Directorate, Business Services, 661 Sheppard Place, ATTN: SDDC–OPM, Fort Eustis, VA 23604–1644. Request for additional information may be sent by email to: *chad.t.privett@us.army.mil* or *george.alie@us.army.mil*.

FOR FURTHER INFORMATION CONTACT: Mr. Chad Privett, (757) 878–8161.

SUPPLEMENTARY INFORMATION:

References: Military Freight Traffic Unified Rules Publications (MFTURP) No. 1; Section 884 of the National Defense Authorization Act.

Background: Section 884 of the National Defense Authorization Act requires DoD to ensure that any fuel-related adjustment in a carriage contract is passed through to the entity bearing the cost of the fuel corresponding to that adjustment. Updating the MFTURP No. 1 ensures DoD can meet the requirements of Section 884.

Miscellaneous: The MFTURP No. 1, as well as the other SDDC publications, can be accessed via the SDDC Web site at: *http://www.sddc.army.mil/Public/Global%20Cargo%20Distribution/Domestic/Publications/.*

C.E. Radford, III,

Division Chief, G9, Strategic Business Directorate.

[FR Doc. 2010–6882 Filed 3–26–10; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 28, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, *Attention:* Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 24, 2010.

James Hyler,

Acting Director,

Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Application to Participate in the Leveraging Educational Assistance and Partnership (LEAP), Special-LEAP, and Grants for Access and Persistence (GAP) Programs.

Frequency: Annually.

Affected Public:

Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 448.

Abstract: The offiically designated educational agencies in each of the 50 States, the District of Columbia, Puerto Rico, and four island jurisdictions use this form to apply annually to participate in the Leveraging Educational Assistance and Partnership (LEAP), Special Leveraging Educational Assistance and Partnership (SLEAP), and Grants for Access and Persistence (GAP) Programs. On this application the states provide information the Department requires to obligate funds and for program management.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the

"Browse Pending Collections" link and by clicking on link number 4210. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–6895 Filed 3–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 28, 2010.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or e-mailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 24, 2010.

James Hyler,

Acting Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report for the Historically Black Colleges and Universities Master's Degree Program.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 18.
Burden Hours: 360.

Abstract: The Department is requesting authorization to annually collect performance report data for the new HBCU Masters Degree Program. This information is being collected to comply with the Government Performance and Results Act (GPRA) of 1993, Section 4 (1115), and the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.253. EDGAR states that recipients of multi-year discretionary grants must submit an APR demonstrating that substantial progress has been made towards meeting the approved objectives of the project. Further, the APR lends itself to the collection of quantifiable data needed to respond to the requirements of OMB's Program Assessment Rating Tool process. In addition, grantees will be required to report on their progress towards meeting the performance measures established for the HBCU Master's Degree Program.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 4155. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 2010–6971 Filed 3–26–10; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Department of Energy (DOE) invites public comment on a proposed emergency collection of information that DOE is developing to collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. 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, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before April 12, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to: Sarah Lynch, Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585, or by e-mail at *sarah.lynch@ee.doe.gov* and DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection guidance and/or collection instrument should be directed to Sarah Lynch at *sarah.lynch@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: *This emergency information collection request contains:* (1) *OMB No.:* New; (2) *Information Collection Request Title:* Biomass; (3) *Type of Review:* Emergency; (4) *Purpose:* To collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. This will ensure adequate information is available to support sound project management and to meet the transparency and accountability associated with the Recovery Act by requesting approval for monthly reporting.

(5) *Annual Estimated Number of Respondents:* 19.

(6) *Annual Estimated Number of Total Responses:* 228.

(7) *Annual Estimated Number of Burden Hours:* 6,175.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $11,000.

(9) *Type of Respondents:* Recipients of American Recovery and Reinvestment Act funding.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this Part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

Statutory Authority: Title IV, H.R. 1 American Recovery and Reinvestment Act of 2009.

Issued in Washington, DC, on March 23, 2009.

John Ferrell,

Biomass Program Manager, Office of Energy Efficiency and Renewable Energy-Biomass.

[FR Doc. 2010–6876 Filed 3–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Proposed Agency Information Collection

AGENCY: U.S. Department of Energy.

ACTION: Notice and request for OMB review and comment.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995, the Department of Energy (DOE) invites public comment on a proposed emergency collection of information that DOE is developing to collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. 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, 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 respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this collection must be received on or before April 12, 2010. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent to:

Drew Ronneberg, Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585.

Or by e-mail at *drew.ronneberg@ee.doe.gov* and

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10102, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Drew Ronneberg at *drew.ronneberg@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This emergency information collection request contains: (1) *OMB No:* New; (2) *Information Collection Request Title:* Batteries; (3) *Type of Review:* Emergency; (4) *Purpose:* To collect data on the status of activities, project progress, jobs created and retained, spend rates and performance metrics under the American Recovery and Reinvestment Act of 2009. This will ensure adequate information is available to support sound project management and to meet the transparency and accountability associated with the Recovery Act by requesting approval for monthly reporting.

(5) *Annual Estimated Number of Respondents:* 30; (6) *Annual Estimated Number of Total Responses:* 360; (7) Annual Estimated Number of Burden Hours: 3600; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $90,000–$129,000; (9) *Type of Respondents:* Recipients of American Recovery and Reinvestment Act funding.

An agency head or the Senior Official, or their designee, may request OMB to authorize emergency processing of submissions of collections of information.

(a) Any such request shall be accompanied by a written determination that:

(1) The collection of information:

(i) Is needed prior to the expiration of time periods established under this Part; and

(ii) Is essential to the mission of the agency; and

(2) The agency cannot reasonably comply with the normal clearance procedures under this Part because:

(i) Public harm is reasonably likely to result if normal clearance procedures are followed;

(ii) An unanticipated event has occurred; or

(iii) The use of normal clearance procedures is reasonably likely to prevent or disrupt the collection of information or is reasonably likely to

cause a statutory or court ordered deadline to be missed.

(b) The agency shall state the time period within which OMB should approve or disapprove the collection of information.

Statutory Authority: Title IV, H.R. 1 American Recovery and Reinvestment Act of 2009.

Issued in Washington, DC, on March 23, 2010.

Patrick Davis,

Program Manager, Office of Vehicles Technology, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 2010–6877 Filed 3–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

U.S. Nuclear Regulatory Commission Technical Evaluation Report for the Phase 1 Decommissioning Plan for the West Valley Demonstration Project, West Valley, NY

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the U.S. Nuclear Regulatory Commission (NRC) Technical Evaluation Report (TER) for the *Phase 1 Decommissioning Plan for the West Valley Demonstration Project, West Valley, NY.* The Phase 1 Decommissioning Plan describes the Phase 1 decommissioning actions for the West Valley Demonstration Project (WVDP) and is consistent with DOE's preferred alternative in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center (DOE/EIS–0226).*

ADDRESSES: Copies of the U.S. Nuclear Regulatory Commission Technical Evaluation Report for the Phase 1 Decommissioning Plan for the West Valley Demonstration Project are available for public inspection at the following locations:

U.S. Department of Energy, FOIA Reading Room, Room 1G–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585–0001, (202) 586–5955.

Concord Public Library, DOE–WVDP Public Reading Room, 18 Chapel Street, Springville, NY 14141, 716–592–7742.

Ashford Office Complex Public Reading Room, 9030 Route 219, West Valley, NY 14171–0191, (716) 942–4679.

U.S. Department of Energy West Valley Demonstration Project Web site: *http://www.wv.doe.gov*.

U.S. Nuclear Regulatory Commission Electronic Reading Room Web site: *http://www.nrc.gov/reading-rm/adams.html.*

FOR FURTHER INFORMATION CONTACT:

Ms. Moira N. Maloney, Decommissioning Plan Project Manager, West Valley Demonstration Project, U.S. Department of Energy, 10282 Rock Springs Road, West Valley, New York 14171–0191 or via electronic mail at *Moira.N.Maloney@wv.doe.gov.*

Mr. Bryan C. Bower, Director, West Valley Demonstration Project, U.S. Department of Energy, 10282 Rock Springs Road, West Valley, New York 14171–0191, or via electronic mail at *Bryan.Bower@wv.doe.gov.*

SUPPLEMENTARY INFORMATION:

The West Valley Demonstration Project Act (the Act), Public Law 96–368 of October 1, 1980, directed DOE to carry out a high-level radioactive waste management demonstration project at the Western New York Nuclear Service Center in West Valley, New York. The purpose of the project was to demonstrate the solidification of high-level radioactive waste for disposal in a Federal repository for permanent disposal. The Act also requires the Department to decontaminate and decommission the underground waste storage tanks and other facilities where the solidified high-level radioactive waste was stored, the facilities used in the solidification of the waste, and any material and hardware used in connection with the project in accordance with such requirements as the NRC may prescribe.

In accordance with the Act, DOE entered into an agreement with the NRC to establish arrangement for review and consultation by the NRC for the Project. The procedures for NRC review and consultation were established in the September 23, 1981, Memorandum of Understanding between DOE and NRC and section 2(c)(1) of the Act. The Act and Memorandum of Understanding require the DOE to submit to the NRC, for its review and comment, a Project Decommissioning Plan for the facilities that were used in solidifying the waste, which includes a description of engineering and operating activities to be performed. The plan was reviewed by the NRC and comments provided to DOE. DOE will review and consider the comments provided prior to the initiation of decontamination and decommissioning operations.

The decommissioning activities described in the Phase 1 Decommissioning Plan for the WVDP are consistent with the Phased Decisionmaking Alternative, the preferred alternative for project closure described in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center (DOE/EIS–0226).* Under the Phased Decisionmaking Alternative, the decommissioning of the Project and Western New York Nuclear Service Center (WNYNSC) would be completed in two phases. Phase 1 decommissioning activities within the project premises, which are described in the Phase 1 Decommissioning Plan, are near-term removal actions that include removal of the Main Plant Process Building, Vitrification Facility, source area of the North Plateau Groundwater Plume, wastewater treatment facility lagoons, and certain ancillary buildings, foundations, slabs, and pads on the WVDP project premises. The Phase 2 decisions on the decommissioning of the remainder of the Project and WNYNSC, or its long-term management, would be made in the future and are not part of the Phase 1 Decommissioning Plan.

The TER for the Phase 1 Decommissioning Plan presents NRC's technical evaluation and view of the Phase 1 decommissioning approach for the WVDP and is based on its technical review of both the Phase 1 Decommissioning Plan and DOE responses to NRC. As prescribed in section 2(c)(1) of the West Valley Demonstration Project Act, Public Law 96–368 of October 1, 1980, and the September 23, 1981, Memorandum of Understanding between DOE and NRC, the NRC review of the DOE's Phase 1 Decommissioning Plan is an informal process, as the NRC does not have a licensing role with regard to DOE's involvement at WVDP and may not require formal procedures or actions.

DOE submitted Revision 0 of the Phase 1 Decommissioning Plan to NRC for technical review on December 3, 2008, and submitted Revision 1, which incorporated additional information, on March 16, 2009. NRC notified DOE on March 20, 2009, that it had finished its completeness review of the Phase 1 Decommissioning Plan and that it was suitable for NRC technical review. After its technical review, NRC submitted a total of 44 requests for additional information (RAI) for the Phase 1 Decommissioning Plan to the DOE on May 15, 2009. DOE responded to the NRC RAI in three separate submittals on August 13, 2009, September 16, 2009, and November 5, 2009. Revision 2 of the

Phase 1 Decommissioning Plan, which incorporated the changes resulting from the responses to the NRC RAIs was submitted to the NRC on December 18, 2009.

The Department will consider NRC views on the Decommissioning Plan expressed in the TER prior to the initiation of decontamination and decommissioning operations.

As indicated by NRC, "Should the EIS process result in the selection of a different preferred alternative from that considered in the Phase 1 DP, the DP would need to be revised and resubmitted for review."

Signed in Washington, DC on March 23, 2010.

Frank Marcinowski,

Acting Chief Technical Officer for Environmental Management.

[FR Doc. 2010–6884 Filed 3–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. IC10–538–001, IC10–539–001, IC10–577–001, IC10–606–001, and IC10–607–001]

Commission Information Collection Activities (FERC–538, FERC–539, FERC–577, FERC–606, and FERC–607); Comment Request; Submitted for OMB Review

March 22, 2010.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice.

SUMMARY: In compliance with the requirements of section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the Federal Energy Regulatory Commission (Commission or FERC) has submitted the information collections described below to the Office of Management and Budget (OMB) for review of the information collection requirements. Any interested person may file comments directly with OMB and should address a copy of those comments to the Commission as explained below. The Commission issued a Notice in the **Federal Register** (75 FR 2124, 1/14/2010) requesting public comments. FERC received no comments and has made this notation in its submission to OMB.

DATES: Comments on the collections of information are due by April 28, 2010.

ADDRESSES: Address comments on the collections of information to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer. Comments to OMB should be filed electronically, c/o *oira_submission@omb.eop.gov* and include the appropriate OMB Control Number(s) and collection number(s) as a point of reference. The Desk Officer may be reached by telephone at 202–395–4638.

A copy of the comments should also be sent to the Federal Energy Regulatory Commission and should refer to Docket Nos. IC10–538–001, IC10–539–001, IC10–577–001, IC10–606–001, and IC10–607–001. (For comments that only pertain to some of the collections, specify the appropriate collection(s) and related docket number(s).) Comments may be filed either electronically or in paper format. Those persons filing electronically do not need to make a paper filing. Documents filed electronically via the Internet must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines. Complete filing instructions and acceptable filing formats are available at *http://www.ferc.gov/help/submission-guide/electronic-media.asp*. To file the document electronically, access the Commission's Web site and click on Documents & Filing, E-Filing (*http://www.ferc.gov/docs-filing/efiling.asp*), and then follow the instructions for each screen. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments.

For paper filings, the comments should be submitted to the Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street, NE., Washington, DC 20426, and should refer to Docket Nos. IC10–538–001, IC10–539–001, IC10–577–001, IC10–606–001, and IC10–607–001 (or the appropriate docket number(s), if the comments only pertain to some of the collections).

All comments may be viewed, printed or downloaded remotely via the Internet through FERC's homepage using the "eLibrary" link. For user assistance, contact *ferconlinesupport@ferc.gov*, or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *DataClearance@FERC.gov*.

SUPPLEMENTARY INFORMATION: For the purpose of publishing this notice and seeking public comment, FERC requests comments on the following information collections:

- FERC–538, Gas Pipeline Certificate: Section 7(a) Mandatory Initial Service, contained in 18 CFR part 156; OMB Control No. 1902–0061;
- FERC–539, Gas Pipeline Certificates: Import/Export Related, contained in 18 CFR parts 153 and 157; OMB Control No. 1902–0062;
- FERC–577, Gas Pipeline Certificates: Environmental Impact Statement, identifies FERC's information collections relating to 18 CFR part 380 implementing NEPA and includes the environmental compliance conditions of 18 CFR 157.206(b); OMB Control No. 1902–0128;
- FERC–606, Notification of Request for Federal Authorization and Requests for Further Information, contained in 18 CFR part 385; OMB Control No. 1902–0241; and
- FERC–607, Report on Decision or Action on Request for Federal Authorization, contained in 18 CFR part 385; OMB Control No. 1902–0240.

The associated regulations, information collections, burdens, and OMB clearance numbers will continue to remain separate and distinct.

FERC–538. Under the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w), upon application by a local distribution company or municipality, a natural gas pipeline company may be ordered by the Commission to extend or improve transportation facilities, to establish physical connections to serve, and to sell natural gas to the applicant. Filings pursuant to the provisions of section 7(a) of the NGA are to contain all information necessary to advise the Commission fully concerning the service which the applicant has requested the Commission to direct the natural gas pipeline company to render (such as a request to direct a natural gas company to extend or improve its transportation facilities, and to sell natural gas to the municipality or person and, for such purpose, to extend its transportation facilities to communities immediately adjacent to such facilities or to territories served by the natural gas pipeline company).

FERC–539. Section 3 of the Natural Gas Act (NGA) (Pub. L. 75–688) (15 U.S.C. 717–717w) provides, in part, that "* * * no person shall export any natural gas from the United States to a foreign country or import any natural gas from a foreign country without first having secured an order from the Commission authorizing it to do so." The 1992 amendments to section 3 of the NGA concern importation or exportation from/to a nation which has a free trade agreement with the United

States, and requires that such importation or exportation: (1) Shall be deemed to be a "first sale", *i.e.,* not a sale for a resale, and (2) Shall be deemed to be consistent with the public interest, and applications for such importation or exportation shall be granted without modification or delay.

With the ratification of the North American Free Trade Agreement and the Canadian Free Trade Agreement, the Federal regulatory focus on construction, operation, and siting of import and export facilities increased significantly.

FERC–577. Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (Pub. L. 91–190) requires that all Federal agencies must include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement on: the environmental impact on the proposed actions; any adverse environmental effects which cannot be avoided should the proposal be implemented; alternatives to the proposed action; the relationship between local short-term uses of man's environment and the maintenance and enhancement of long term productivity; and any irreversible and irretrievable commitment of resources which would be involved in the proposed action should it be implemented.

FERC–606 and FERC–607. Section 313 of EPAct 2005 directs the Commission: (1) To establish a schedule for state and federal agencies and officers to act on requests for federal authorizations required for NGA section 3 and 7 gas projects, and (2) to maintain a complete consolidated record of all decisions or actions by the Commission and other agencies and officers with respect to federal authorizations.

FERC–606 requires agencies and officials responsible for issuing, conditioning, or denying requests for federal authorizations necessary for a proposed natural gas project to report to FERC regarding the status of an authorization request. This reporting requirement is intended to allow agencies to assist the FERC to make better informed determinations in establishing due dates for agencies' decisions.

FERC–607 requires agencies or officials to submit to FERC a copy of a decision or action on a request for federal authorization and an accompanying index to the documents and materials relied on in reaching a conclusion.

If the collections of data for FERC–538, FERC–539, FERC–577, FERC–606, and FERC–607 in general were not conducted, the Commission would not be able to meet its statutory responsibilities, would not be able to authorize and monitor certain energy projects to ensure that the construction of natural gas pipeline projects and LNG terminals are economically viable, and at the same time, protect the environment.

Action: The Commission is requesting a three-year extension of the current FERC–538, FERC–539, FERC–577, FERC–606, and FERC–607 requirements, with no changes.

Burden Statement: The estimated annual public reporting burdens and the associated public costs follow.[1]

FERC Data collection	Projected number of respondents (1)	Number of responses per respondent (2)	Projected average burden hours per response (3)	Total annual burden hours [1] (1)×(2)×(3)
FERC–538	1	1	240	240
FERC–539	6	25.3	12	1821.6
FERC–577	92	16	193	284,096
FERC–606	48	35.46	4.4	7,489
FERC–607	48	34.45	6.3	10,423

The total annual cost to respondents[1] [2] is estimated as follows.

FERC Data collection	Total annual burden hours (1)	Estimated hourly cost [2] (2)	Estimated total annual cost to respondents ($) [1] (2)×(1)
FERC–538	240	$66.29	$15,909
FERC–539	1821.6	$66.29	$120,753
FERC–577	284,096	$66.29	$18,832,723
FERC–606	7,489	$66.29	$496,446
FERC–607	10,423	$66.29	$690,941

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information;

[1] These figures may not be exact, due to rounding and/or truncating.

[2] Using 2,080 hours/year, the estimated cost for 1 full-time employee is $137,874/year. The estimated hourly cost is $66.29 (or $137,874/2,080).

and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.* permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6823 Filed 3–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP10–89–000; PF09–13–000]

East Tennessee Natural Gas, LLC; Notice of Application

March 22, 2010.

Take notice that on March 8, 2010, East Tennessee Natural Gas, LLC (East Tennessee), 5400 Westheimer Court, Houston, Texas 77056–5310, filed in the above referenced docket an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) for authorization to: (i) Install an approximately 8.4-mile, 24-inch diameter mainline extension and to construct of a new meter station and installation of a launcher/receiver at the terminus of the extension; (ii) install 8.0 miles of 24-inch diameter pipeline looping, including a launcher/receiver, mainline valve, and regulator; (iii) abandon and replace approximately 2.3 miles of 12-inch diameter pipeline with 24-inch diameter pipeline, including new piping connections at the Fordtown Compressor Station; (iv) abandon and replace 9.2 miles of 8-inch diameter pipeline with 24-inch diameter pipeline, including new piping connections at the Bristol Compressor Station; and (v) modify and install of regulation and piping at the existing Flatwoods and Glade Spring Compressor Stations (the NET Project). The NET Project is located in Greene, Hawkins, Sullivan, and Washington Counties, Tennessee and Washington County, Virginia. East Tennessee states that the NET Project will allow it to provide 150,000 dekatherms (Dth) per day of firm transportation to a proposed natural gas-fired power generation facility of Tennessee Valley Authority (TVA), all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site Web at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Any questions concerning this application may be directed to Lisa A. Moore, General Manager, Rates and Certificates, East Tennessee Natural Gas, LLC, 5400 Westheimer Court, PO Box 1642, Houston, Texas 77251–1642, at (713) 627–4102, or *lamoore@spectraenergy.com.*

On August 10, 2009, Commission staff granted East Tennessee's request to utilize the Pre-Filing Process and assigned Docket No. PF09–13–000 to staff activities involved the NET Project. Now, as of the filing the March 8, 2010 application, the Pre-Filing Process for this project has ended. From this time forward, this proceeding will be conducted in Docket No. CP10–89–000, as noted in the caption of this Notice.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made in the proceeding with the Commission and must mail a copy to the applicant and to every other party. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentors will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC.

There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: April 12, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6826 Filed 3–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare an Environmental Impact Statement/Staff Assessment for the Proposed Construction and Operation of the Rice Solar Energy Project, Riverside County, CA (DOE/EIS–0439) and Possible Land Use Plan Amendments

AGENCY: Western Area Power Administration, DOE; Bureau of Land Management, DOI.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement/Staff Assessment, Possible Land Use Plan Amendments and to Conduct Scoping Meetings; Notice of Floodplain and Wetlands Involvement.

SUMMARY: In compliance with the National Environmental Policy Act of 1969 (NEPA), as amended, the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, and the California Environmental Quality Act (CEQA), the Western Area Power Administration (Western), an agency of the DOE, and the Bureau of Land Management (BLM) Palm Springs—South Coast Field Office, together with the California Energy Commission (CEC), intend to prepare a joint Environmental Impact Statement (EIS)/Staff Assessment (SA), which may include an amendment to the California Desert Conservation Area (CDCA) Plan (1980, as amended) and by this notice are announcing the beginning of the scoping process to inform the public and interested parties and to solicit public comments and identify issues concerning the scope, proposed actions, and alternatives to be addressed in the EIS and SA for the proposed Rice Solar Energy Project (Project) in Riverside County, California. Rice Solar Energy, LLC (RSE) has applied to Western to interconnect the proposed Project to Western's electrical transmission system. This EIS/SA will address Western's proposed Federal action of interconnecting the proposed Project to Western's transmission system and making any necessary modifications to Western facilities to accommodate the interconnection and will also address BLM's proposed action of authorizing rights of way (ROW) for a 230-kilovolt (kV) transmission line, access road, and fiber optic line and possibly amending the CDCA. The EIS/SA will also review the potential environmental impacts of constructing, operating, and maintaining RSE's 150-megawatt (MW) solar-powered generating facility, consisting of a solar field of heliostat mirrors, power block, thermal energy storage system, substation site, transmission line, temporary laydown areas, and other ancillary facilities.

DATES: The public scoping period begins with the publication of this notice and will end on April 28, 2010. Western and BLM will host public scoping meetings to provide information on the proposed Project and gather comments on the proposal. The public scoping meetings will be on March 31, 2010 at Big River Community Services District, 150351 Del Rey Street, Big River, California, and on April 1, 2010 at University of California Riverside-Palm Desert Campus, 75080 Frank Sinatra Drive, Palm Desert, California 92211. Scoping meetings will be from 4 p.m. to 7 p.m. The meetings will be informal, and attendees will be able to speak directly with Western, BLM, and RSE representatives about the proposed Project. Oral or written comments may be provided at the public scoping meetings, mailed or e-mailed to Ms. Liana Reilly at the address listed in the addresses section.

ADDRESSES: Written comments on the scope of the EIS/SA and possible land use plan amendment should be addressed to:

Ms. Liana Reilly, NEPA Document Manager, Western Area Power Administration, P.O. Box 281213, Lakewood, Colorado 80228–8213 or e-mail at *RiceSolar@wapa.gov.*

Allison Shaffer, Project Manager, Palm Springs-South Coast Field Office, BLM 1201 Bird Center Drive, Palm Springs, California 92262 or e-mail at *CAPSSolarRice@blm.gov.*

John Kessler, Project Manager, Siting, Transmission and Environmental Protection Division, CEC 1516 Ninth Street, Sacramento, California 95814 or e-mail at *Jkessler@energy.state.ca.us.*

To help define the scope of the EIS, written comments should be received no later than April 28, 2010.

FOR FURTHER INFORMATION CONTACT: For information on the proposed Project, the EIS process or to receive a copy of the Draft EIS (DEIS) when it is published, contact Ms. Reilly at (720) 962–7253, or (800) 336–7288, or the address provided above.

For information relating to BLM's participation, contact Allison Shaffer at (760) 833–7100 or the address provided above.

For information relating to the CEC's participation, contact John Kessler at (916) 654–4679 or the address above or information can be obtained through the CEC's Public Adviser's Office at (916) 654–8236 or toll free in California, (800) 822–6228, or by e-mail at *publicadviser@energy.state.ca.us.*

For general information on DOE's NEPA review procedures or status of a NEPA review, contact Ms. Carol M. Borgstrom, Director of NEPA Policy and Compliance, GC–54, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, telephone (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: Western, an agency within DOE, markets Federal hydroelectric power to preference customers, as specified by law. These customers include municipalities, cooperatives, irrigation districts, Federal and State agencies, and Native American tribes. Western's service territory covers 15 western states, including California. Western owns and operates more than 17,000 miles of high-voltage transmission lines. Under Federal law, BLM is responsible for responding to applications for ROW on public lands. BLM has received an application for a ROW authorization to construct and operate a transmission line that would interconnect the Rice Solar Energy Project to Western's transmission system. A portion of the transmission line would cross managed lands in eastern Riverside County, California. Pursuant to BLM's CDCA Plan, sites associated with power generation or transmission not identified in the CDCA Plan will be considered through the plan amendment process. By this notice, the BLM is complying with the requirements in 43 CFR 1610.2 (c) to notify the public of potential amendments to land use plans, subject to the findings of the EIS.

Western and BLM intend to prepare an EIS to analyze the impacts of their respective proposed Federal action and RSE's proposed Project in accordance with the NEPA, as amended, CEQ

regulations for implementing NEPA (40 CFR 1500–1508), and agency implementing regulations. This will be accomplished through preparation of a DEIS/SA in coordination with the CEC. Under California law, the CEC is responsible for reviewing the Applications for Certification (AFC) filed for thermal power plants over 50 MW, and also has the role of lead agency for the environmental review of such projects under the CEQA (Pub. Res. Code, sections 21000 *et seq.* and, 25500 *et seq.*). The CEC conducts these reviews in accordance with the administrative adjudication provisions of California's Administrative Procedure Act (Government Code section 11400 *et seq.*) and its own regulations governing site certification proceedings (Cal. Code Regulations., title 20, section 1701 *et seq.*), which have been deemed CEQA-equivalent by the Secretary of Resources.

RSE is a Santa Monica, California based energy company formed by U.S. Renewables Group, a private equity firm focused exclusively on renewable energy development.

RSE's Proposed Project

RSE proposes to construct a 150–MW solar-powered electrical generation facility in eastern Riverside County, California. The proposed solar generation facility is located within a private land holding of 3,324 acres, of which 2,560 acres constitute the project parcel. The solar generation facility site is approximately 40 miles from Blythe, 65 miles from Needles, and 75 miles from Twentynine Palms. State Route 62 is immediately adjacent to the northern boundary of the proposed solar generation facility and would be the primary access during construction and operation. The proposed solar generation facility would be located on the site of a former airfield (Rice Army Airfield) that was used during World War II as a training site, later transferred to private use, and then abandoned sometime between 1955 and 1958.

The proposed Project would use concentrating solar "power tower" technology to capture the sun's heat to make steam, which would power traditional steam turbine generators. The solar generation facility would contain the power block, a central receiver or tower, solar fields which consist of mirrors or heliostats to reflect the sun's energy to the central tower, a thermal energy storage system, technical and non-technical buildings, a storm water system, two on-site water wells, water supply and treatment system, a wastewater system, evaporation ponds, and other supporting facilities. These facilities would be situated on 1,410 acres within the project parcel and would be surrounded by a site fence. Other Project components would include a new transmission line, a new electrical substation, and an access road.

RSE has applied to Western to interconnect the proposed Project to Western's transmission system. The new 230–kV transmission line from the solar facility would extend approximately ten miles from the solar facility boundary to a new substation to be constructed adjacent to Western's existing line. The substation, to be owned and operated by Western, would be located adjacent to Western's existing Parker-Blythe transmission line. The new substation would be approximately 300 x 400 feet or about three acres.

An on-site temporary laydown area would be used during the construction phase of the Project. Laydown areas within the project parcel total approximately 30 acres and would be used for storage and assembly of proposed Project components and for temporary construction trailers. Because of the remote location of the site, RSE will make available a construction workforce RV/trailer parking camp on the project site near the parking and laydown areas at the north end of the heliostat field. This workforce camp will offer spaces for up to 300 trailers or RVs (in keeping with the county requirement that limits trailer parks to 20 per acre), electrical hookups, and mobile water and sanitary sewer service for the trailers and RVs.

Proposed Agency Actions and Alternatives

Western's proposed action is to interconnect the proposed Project to Western's transmission system at the substation described above. BLM's proposed action is to authorize a ROW in favor of a 230–kV transmission line, access road, and fiber optic line and possibly amend the CDCA.

Western and BLM will also consider the no-action alternative in the EIS. Under the no-action alternative, Western would deny the interconnection request and BLM would not grant a ROW. There would be no plan amendment to the CDCA. For the purpose of impact analysis and comparison in the EIS/SA, it will be assumed that RSE's proposed Project would not be built and the environmental impacts associated with construction and operation would not occur.

Agency Responsibilities

Because interconnection of the proposed Project would incorporate a major new generation resource into Western's power transmission system, Western has determined that an EIS is required under DOE NEPA implementing procedures, 10 CFR part 1021, Subpart D, Appendix D, class of action D6.[1]

Western and BLM are serving as co-lead Federal agencies, as defined at 40 CFR 1501.5, for preparation of the EIS and will coordinate with the CEC in preparation of a joint NEPA/CEQA EIS/SA. Western and BLM invite other Federal, State, local, and Tribal agencies with jurisdiction by law or special expertise with respect to environmental issues to be cooperating agencies on the EIS, as defined at 40 CFR 1501.6. Such agencies may make a request to Western and BLM to be a cooperating agency by contacting Ms. Reilly at the address listed in the **ADDRESSES** section. Because the proposed Project may involve action in floodplains or wetlands, this NOI also serves as a notice of proposed floodplain or wetland action, in accordance with DOE regulations for Compliance with Floodplain and Wetlands Environmental Review Requirements at 10 CFR 1022.12(a). The EIS will include a floodplain/wetland assessment and, if required, a floodplain/wetland statement of findings will be issued with the Final EIS or Western and BLM's Records of Decision.

Environmental Issues

This notice is to inform agencies and the public of Western and BLM's intent to prepare an EIS and solicit comments and suggestions for consideration in the EIS. To help the public frame its comments, the following list contains potential environmental issues preliminarily identified for analysis in the EIS:

1. Impacts on protected, threatened, endangered, or sensitive species of animals or plants
2. Impacts on migratory birds
3. Introduction of noxious weeds, invasive, and non-native species
4. Impacts on recreation and transportation
5. Impacts on land use, wilderness, farmlands, and Areas of Critical Environmental Concern
6. Impacts on cultural or historic resources and tribal values
7. Impacts on human health and safety

[1] On October 4, 1999, DOE's Assistant Secretary for Environmental, Safety and Health delegated to Western's Administrator the authority to approve EISs for integrating transmission facilities with Western's transmission grid.

8. Impacts on air, soil, and water resources (including air quality and surface water impacts)

9. Visual impacts

10. Socioeconomic impacts and disproportionately high and adverse impacts to minority and low-income populations

This list is not intended to be all-inclusive or to imply any predetermination of impacts. Western and BLM invite interested parties to suggest specific issues within these general categories, or other issues not included above, to be considered in the EIS/SA.

A certificate designating approval from the CEC must be obtained by RSE before construction of power plants and/or electric transmission lines and related facilities.

Public Participation

The EIS process includes a public scoping period; public scoping meetings, public review, and hearings on the draft EIS, publication of a final EIS, and publication of separate records of decision by Western and BLM. Persons interested in receiving future notices, Project information, copies of the EIS, and other information on the NEPA review process should contact Ms. Reilly at the address listed in the **ADDRESSES** section.

Western and BLM will hold public scoping meetings as described in the **DATES** section above.

The purpose of the scoping meetings is to provide information about the proposed Project, review Project maps, answer questions, and take written comments from interested parties. All meeting locations are handicapped-accessible. Anyone needing special accommodations should contact Ms. Reilly to make arrangements. The public will have the opportunity to provide written comments at the public scoping meetings. Written comments may also be sent to Ms. Reilly by fax, e-mail, or U.S. Postal Service mail. To help define the scope of the EIS, comments should be received by Western no later than April 28, 2010.

Dated: March 24, 2010.

Timothy J. Meeks,

Administrator, Western Power.

Dated: March 19, 2010.

Karla D. Norris,

Associate Deputy State Director, Bureau of Land Management.

[FR Doc. 2010–7019 Filed 3–26–10; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL03–153–005]

Dynegy Power Marketing, Inc;. Notice of Filing

March 22, 2010.

Take notice that on December 15, 2008, Dynegy Power Marketing, Inc., Dynegy Power Corp., El Segundo Power LLC, Long Beach Generation LLC, Cabrillo Power I LLC and Cabrillo Power II LLC (collectively Dynegy) hereby submitted a modified Stipulation and Agreement in compliance with Commission Order dated November 14, 2008.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible online at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6825 Filed 3–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–229; EL00–98–214]

San Diego Gas & Electric Co.; California Independent System Operator; Notice of Filing

March 22, 2010.

Take notice that on July 20, 2009, Avista Energy, Inc. pursuant to the Commission's Order on Rehearing (June 18, 2009) submitted a compliance filing and revisions related to their Return on Investment.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on March 29, 2010.

Kimberly D. Bose,

Secretary.

[FR Doc. 2010–6824 Filed 3–26–10; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Chief Joseph Hatchery Program

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the proposed action identified in BPA's Chief Joseph Hatchery Program Environmental Impact Statement (DOE/EIS–0384, November 2009). BPA has decided to fund the construction, operation, and maintenance of the Chief Joseph Hatchery and associated facilities in Okanogan County, Washington and adopt the mitigation measures in the Mitigation Action Plan. All practicable means to avoid or minimize environmental harm are adopted. The hatchery program will produce juvenile Chinook salmon and will help mitigate for the effects of the Federal Columbia River Power System on fish and wildlife by enhancing Chinook populations below Chief Joseph Dam in the Okanogan River subbasin and upper middle Columbia River subbasin, and by complementing other on-going salmon protection and mitigation measures. The U.S. Army Corps of Engineers (USACE), the operator of the Chief Joseph Dam, is a Federal cooperating agency under NEPA; the Confederated Tribes of the Colville Reservation are the project sponsors and will own and operate the Chinook salmon production program and hatchery facilities. The National Oceanic and Atmospheric Administration's National Marine Fisheries Service, the U.S. Fish and Wildlife Service; and the State of Washington's Department of Fish and Wildlife were consulted during the development of the EIS. BPA is issuing this ROD for its actions only; the USACE will issue its own separate ROD.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov.*

FOR FURTHER INFORMATION, CONTACT: Mickey Carter, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or e-mail *macarter@bpa.gov.*

Issued in Portland, Oregon, on March 18, 2010.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. 2010–6881 Filed 3–26–10; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Being Reviewed by the Federal Communications Commission, Comments Requested

March 22, 2010.

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, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. 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; (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, and (e) ways to further reduce the information collection burden for small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB 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 currently valid OMB control number.

DATES: Persons wishing to comments on this information collection should submit comments on or before May 28, 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 [insert PRA staff member's name], Federal Communications Commission (FCC). To submit your PRA comments by e–mail send them to: PRA@fcc.gov.

FOR FURTHER INFORMATION CONTACT: Judith B. Herman, Office of Managing Director, (202) 418–0214. For additional information about the information collection(s) send an e–mail to PRA@fcc.gov or contact Judith B. Herman, 202–418–0214.

SUPPLEMENTARY INFORMATION:

OMB Control No: 3060–0261.

Title: Section 90.215, Transmitter Measurements.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for–profit, not–for–profit institutions, and state, local or tribal government.

Number of Respondents: 184,655 respondents; 409,048 responses.

Estimated Time Per Response: .033 hours

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this collection of information is contained in 47 U.S.C. section 303(f).

Total Annual Burden: 13,499 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: N/A.

Need and Uses: The Commission will submit this expiring information collection to the Office of Management and Budget (OMB) after this comment period in order to obtain the full three year clearance from them. There is a 8,451 hour increase in this submission which is due to re–calculations of the Commission's previous estimates.

Section 90.215 requires station licensees to measure the carrier frequency, output power, and modulation of each transmitter authorized to operate with power in excess of two watts when the transmitter is initially installed and when any changes are made which would likely affect the modulation characteristics. Such measurements, which help ensure proper operation of transmitters, are to be made by a qualified engineering measurement service, and are required to be retained in the station records, along with the name and address of the engineering measurement service, and the person making the measurements.

The information is normally used by the licensee to ensure that equipment is operating within prescribed tolerances. Prior technical operation of transmitters helps limit interference to other users

and provides the licensee with the maximum possible utilization of equipment.

Federal Communications Commission.

Bulah P. Wheeler,

Acting Associate Secretary,

Office of the Secretary,

Office of Managing Director.

[FR Doc. 2010–6799 Filed 3–26–10; 8:45 am]

BILLING CODE 6712–01–S

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–03]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: 60-day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as "Members of the Banks," which has been assigned control number 2590–0003 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2010.

DATES: Interested persons may submit comments on or before May 28, 2010.

ADDRESSES: Submit comments to the FHFA using any one of the following methods:

- *E-mail: regcomments@fhfa.gov.* Please include Proposed Collection; Comment Request: "Members of the Banks, (No. 2010–N–03)" in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552, ATTENTION: Public Comments/Proposed Collection; Comment Request: "Members of the Banks, (No. 2010–N–03)."
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *e-mail* to FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the agency.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by telephone at 202–408–2866 (not a toll free number), by e-mail at *jonathan.curtisj@fhfa.gov,* or by regular mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 4 of the Federal Home Loan Bank Act (Bank Act) establishes the eligibility requirements an institution must meet in order to become a member of a Federal Home Loan Bank (Bank).[1] The membership rule, which implements section 4 of the Bank Act, provides uniform requirements an applicant for Bank membership must meet and review criteria a Bank must apply to determine if an applicant satisfies the statutory and regulatory membership eligibility requirements.[2]

More specifically, the membership rule implements the statutory eligibility requirements and provides guidance on how an applicant may satisfy such requirements. The rule authorizes a Bank to approve or deny each membership application subject to the statutory and regulatory requirements and permits an applicant to appeal to FHFA a Bank's decision to deny certification as a Bank member. The rule also imposes a continuing obligation on a current Bank member to provide information necessary to determine if it remains in compliance with applicable statutory and regulatory eligibility requirements.

The information collection is necessary to enable a Bank to determine whether prospective and current Bank members satisfy the statutory and regulatory requirements to be certified initially and maintain their status as members eligible to obtain Bank advances. FHFA requires and uses the information collection to determine whether to uphold or overrule a Bank's decision to deny member certification to an applicant.

The OMB control number for the information collection is 2590–0003, which is due to expire on July 31, 2010. The likely respondents are institutions that want to be certified as or are members of a Bank seeking continued certification.

B. Burden Estimate

FHFA estimates the total annual average number of respondents who are initial applicants at 212, with 1 response per applicant. The estimate for the average hours per application is 21.5 hours. The estimate for the annual hour burden for applicants is 4,558 hours (212 applicants × 1 response per applicant × 21.5 hours per response).

FHFA estimates the total annual average number of maintenance respondents, *i.e.,* current Bank members, at 8,106, with 1 response per member. The estimate for the average hours per maintenance response is 0.6 hours. The estimate for the annual hour burden for Bank members is 4,864 hours (8,106 members × 1 response per member × 0.6 hours per response).

The estimate for the total annual hour burden for all respondents is 9,422 hours.

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: March 22, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–6912 Filed 3–26–10; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE AGENCY

[No. 2010–N–02]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

[1] 12 U.S.C. 1424.

[2] 12 CFR part 1263 (former part 925). *See* 75 FR *678, 690* (Jan. 5, 2010).

ACTION: 60-Day notice of submission of information collection for approval from the Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the Federal Housing Finance Agency (FHFA) is seeking public comments concerning the information collection known as "Capital Requirements for the Federal Home Loan Banks," which has been assigned control number 2590–0002 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2010.

DATES: Interested persons may submit comments on or before May 28, 2010.

ADDRESSES: Submit comments to FHFA using any one of the following methods:

- *E-mail: regcomments@fhfa.gov.* Please include Proposed Collection; Comment Request: "Capital Requirements for the Federal Home Loan Banks, (No. 2010–N–02)" in the subject line of the message.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 1700 G Street NW., Washington, DC 20552, ATTENTION: Public Comments/ Proposed Collection; Comment Request: "Capital Requirements for the Federal Home Loan Banks, (No. 2010–N–02)."
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *e-mail* to FHFA at *regcomments@fhfa.gov* to ensure timely receipt by the agency.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.* In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m., at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at 202–414–6924.

FOR FURTHER INFORMATION CONTACT: Jonathan F. Curtis, Financial Analyst, Division of Federal Home Loan Bank Regulation, by telephone at 202–408–2866 (not a toll free number), by e-mail at *jonathan.curtisj@fhfa.gov,* or by regular mail at the Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

A. Need For and Use of the Information Collection

Section 6 of the Federal Home Loan Bank Act (Bank Act) establishes the capital structure for the Federal Home Loan Banks (Banks) and requires FHFA to issue regulations prescribing uniform capital standards applicable to each Bank.[1] Parts 930, 931, 932, and 933 of title 12, Code of Federal Regulations implement the statutory capital structure for the Banks. Part 930 establishes definitions applicable to risk management and the capital regulations; part 931 concerns Bank capital stock; part 932 establishes Bank capital requirements; and part 933 sets forth the requirements for Bank capital structure plans. The provisions of part 931 provide that a Bank must require its members to maintain a minimum investment in the capital stock of the Bank as a condition to becoming and remaining a member of the Bank and as a condition to transacting business with the Bank or obtaining advances from the Bank. The amount of the required minimum investment is determined in accordance with the Bank's capital plan under part 933.

The Banks use the information collection to determine the amount of capital stock a member must purchase to maintain membership in and to obtain services from a Bank. More specifically, the provisions of §§ 931.3 and 933.2(a) authorize a Bank to offer its members several options to satisfy a membership investment in capital stock and an activity-based stock purchase requirement. The information collection is necessary to provide the Banks with the flexibility to meet the statutory and regulatory capital structure requirements while allowing Bank members to choose the option best suited to their business requirements.

The OMB number for the information collection is 2590–0002. The OMB clearance for the information collection expires on July 31, 2010. The likely respondents include Banks and Bank members.

B. Burden Estimate

FHFA estimates the total annual average number of activity-based stock purchase requirement respondents at 5,813, with 4 responses per respondent. The estimate for the average hours per response is 20 hours. The estimate for the annual hour burden for activity-based stock purchase requirement respondents is 465,040 hours (5,813 activity-based respondents × 4 responses per respondent × 20 hours per response).

FHFA estimates the total annual average number of membership investment in capital stock respondents at 8,106, with 4 responses per respondent. The estimate for the average hours per response is 10 hours. The estimate for the annual hour burden for membership investment in capital stock respondents is 324,240 hours (8,106 membership investment respondents × 4 responses per respondent × 10 hours per response).

The estimate for the total annual hour burden for all respondents is 789,280 hours.

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Dated: March 22, 2010.

Edward J. DeMarco,

Acting Director, Federal Housing Finance Agency.

[FR Doc. 2010–6964 Filed 3–26–10; 8:45 am]

BILLING CODE P

[1] 12 U.S.C. 1426.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's

functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov,* or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60-days.

Proposed Project: Girls at Greater Risk for Juvenile Delinquency and HIV Prevention Program—OMB No. 0990–NEW–Office on Women's Health (OWH).

Abstract: The Office on Women's Health (OWH) is seeking a new clearance to conduct a three year data collection associated with the evaluation of the "Girls at Greater Risk for Juvenile Delinquency and HIV Prevention Program". The evaluation is designed to determine best practices and gender-responsive strategies for at-risk girls and adolescents between the ages of nine and 17 years. Data will be collected from program participants, parents of program participants, program staff (*i.e.* program directors and program staff), program partners and community residents and will be submitted to OWH on a quarterly basis. Primarily private non-profit organizations and girls and adolescents participating in the program and their parents will be affected by this data collection.

ESTIMATED ANNUALIZED BURDEN TABLE

Forms (If necessary)	Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Prevention Education Questionnaire	Program participant	750	2	2	3,000
Focus group	Program participant	120	1	90/60	180
Focus group	Parent of Program participant	120	1	90/60	180
Interview	Program Director	10	2	90/60	30
	Program Staff	10	150	30/60	750
Interview	Program Staff	10	2	45/60	15
Interview	Program Partner	60	1	45/60	45
Focus group	Program Partner	120	1	90/60	180
Community Event Survey	Community Resident	250	1	5/60	21
Total					4,401

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–6902 Filed 3–26–10; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

[Document Identifier: OS–0990–New]

Agency Information Collection Request; 60-Day Public Comment Request

AGENCY: Office of the Secretary.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed information collection request for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–5683. Written comments and recommendations for the proposed information collections must be directed to the OS Paperwork Clearance Officer at the above e-mail address within 60 days.

Proposed Project: Evaluation of Office for Human Research Protections Outreach Pamphlet on Public Participation in Research—Office for Human Research.

Abstract: This evaluation project addresses the Office for Human Research Protection's need for the evaluation of an informational outreach pamphlet, "Becoming a Research Participant: It's Your Decision," to educate the general public about factors to consider in their choice to participate or not participate in research. The evaluation is particularly important for the development and efficient distribution of future educational material. Participants in this survey will be members of the research community, broadly defined, including members of the human research protections community, who received the pamphlet for distribution by their organizations. The survey will collect a small amount of descriptive information regarding the research setting, how the institution utilized the pamphlet, the impact of the pamphlet's appearance and content, and to a brief degree, if and how the pamphlet had an effect on research participation.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of respondent	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Member of Research Community	325	1	20/60	108

Seleda Perryman,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. 2010–6903 Filed 3–26–10; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10108, CMS–367, CMS–10302, CMS–10179, CMS–R–234 and CMS–2540]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Managed Care Regulations for 42 CFR 438.6, 438.8, 438.10, 438.12, 438.50, 438.56, 438.102, 438.114, 438.202, 438.204, 438.206, 438.207, 438.240, 438.242, 438.402, 438.404, 438.406, 438.408, 438.410, 438.414, 438.416, 438.604, 437.710, 438.722, 438.724, and 438.810; *Use:* These information collection requirements implement regulations that allow States greater flexibility to implement mandatory managed care program, implement new beneficiary protections, and eliminate certain requirements viewed by State agencies as impediments to the growth of managed care programs. Information collected includes information about managed care programs, grievances and appeals, enrollment broker contracts, and managed care organizational capacity to provide health care services. *Form Number:* CMS–10108 (OMB#: 0938–0920); *Frequency:* Reporting: Occasionally; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 39,114,558; *Total Annual Responses:* 4,640,344; *Total Annual Hours:* 3,930,093.5. (For policy questions regarding this collection contact Angela Garner at 410–786–7062. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Program Monthly and Quarterly Drug Reporting Format; *Use:* Section 1927 of the Social Security Act requires drug manufacturers to enter into and have in effect a rebate agreement with the federal government for States to receive funding for drugs dispensed to Medicaid beneficiaries. The Deficit Reduction Act (DRA) of 2005 modified section 1927 to require additional reporting requirements beyond the quarterly data currently collected. CMS Form 367 identifies the data fields that manufacturers must submit to CMS on both a monthly and quarterly basis. *Form Number:* CMS–367 (OMB#: 0938–0578); *Frequency:* Monthly and Quarterly; *Affected Public:* Private Sector: Business or other for-profits; *Number of Respondents:* 580; *Total Annual Responses:* 9,280; *Total Annual Hours:* 137,344. (For policy questions regarding this collection contact Samone Angel at 410–786–1123. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Collection Requirements for Compendia for Determination of Medically-accepted Indications for Off-label Uses of Drugs and Biologicals in an Anti-cancer Chemotherapeutic Regimen *Use:* Congress enacted the Medicare Improvement of Patients and Providers Act (MIPPA). Section 182(b) of MIPPA amended section 1861(t)(2)(B) of the Social Security Act (42 U.S.C. 1395x(t)(2)(B)) by adding at the end the following new sentence: 'On and after January 1, 2010, no compendia may be included on the list of compendia under this subparagraph unless the compendia has a publicly transparent process for evaluating therapies and for identifying potential conflicts of interest.' We believe that the implementation of this statutory provision that compendia have a "publicly transparent process for evaluating therapies and for identifying potential conflicts of interests" is best accomplished by amending 42 CFR 414.930 to include the MIPPA requirements and by defining the key components of publicly transparent processes for evaluating therapies and for identifying potential conflicts of interests.

All currently listed compendia will be required to comply with these provisions, as of January 1, 2010, to remain on the list of recognized compendia. In addition, any compendium that is the subject of a future request for inclusion on the list of recognized compendia will be required to comply with these provisions. No compendium can be on the list if it does not fully meet the standard described in section 1861(t)(2)(B) of the Act, as revised by section 182(b) of the MIPPA. *Form Number:* CMS–10302 (OMB #: 0938–1078); *Frequency:* Reporting, Recordkeeping and Third-party disclosure; *Affected Public:* Business and other for-profits and Not-for-profit institutions; *Number of Respondents:* 845; *Total Annual Responses:* 900; *Total Annual Hours:* 5,135. (For policy questions regarding this collection contact Brijet Burton at 410–786–7364. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Requests by Hospitals for an Alternative Cost-to-Charge Ratio. *Use:* Section 1886(d)(5)(A) of the Act provides for additional Medicare payments to Inpatient Prospective Payment System (IPPS) hospitals for cases that incur

extraordinarily high costs. To qualify for outlier payments, a case must have costs above a predetermined threshold amount (a dollar amount by which the estimated cost of a case must exceed the Medicare payment). Hospital-specific cost-to-charge ratios are applied to the covered charges for a case to determine the estimated cost of the case. In general, additional outlier payments for eligible cases are made based on a marginal cost factor of 80 percent, i.e. a fixed percentage of the costs. Therefore, if the estimated cost of the case exceeds the Medicare payment for that discharge plus the outlier threshold, generally Medicare will pay the hospital 80 percent of the excess amount. The outlier threshold is updated annually at the beginning of the Federal Fiscal Year. *Form Number:* CMS–10179 (OMB #: 0938–1020); *Frequency:* Occasionally; *Affected Public:* Private Sector and Business or other for-profits, Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 18 *Total Annual Hours:* 144. (For policy questions regarding this collection contact Michael Treitel at 410–786–4552. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Subpart D—Private Contracts and Supporting Regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455. *Use:* Section 4507 of Balancing Budget Act (BBA) 1997 amended section 1802 of the Social Security Act to permit certain physicians and practitioners to opt-out of Medicare and to provide through private contracts services that would otherwise be covered by Medicare. Under such contracts the mandatory claims submission and limiting charge rules of section 1848(g) of the Act would not apply. Subpart D and the Supporting Regulations contained in 42 CFR 405.410, 405.430, 405.435, 405.440, 405.445, and 405.455, counters the effect of certain provisions of Medicare law that, absent section 4507 of BBA 1997, preclude physicians and practitioners from contracting privately with Medicare beneficiaries to pay without regard to Medicare limits. *Form Number:* CMS–R–234 (OMB#: 0938–0730); *Frequency:* Biennially; *Affected Public:* Private Sector and Business or other for-profits; *Number of Respondents:* 26,820; *Total Annual Responses: 26,820; Total Annual Hours:* 7,197. (For policy questions regarding this collection contact Fred Grabau at 410–786–0206. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report. *Use:* Providers of services participating in the Medicare program are required under sections 1815(a), 1833(e) and 1861(v)(1)(A) of the Social Security Act (42 USC 1395g) to submit annual information to achieve settlement of costs for health care services rendered to Medicare beneficiaries. *Form Number:* CMS–2540 (OMB#: 0938–0463); *Frequency:* Yearly; *Affected Public:* Private Sector; *Number of Respondents:* 15,071; *Total Annual Responses: 15,071; Total Annual Hours:* 2,953,916 (For policy questions regarding this collection contact Edwin Gill Sr. at 410–786–4525. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by *May 28, 2010:*

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for "Comment or Submission" or "More Search Options" to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, *Attention:* Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 19, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–7027 Filed 3–26–10; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10292, CMS–718–721 and CMS–685]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* State Medicaid HIT Plan and Templates for Implementation of Section 4201 of ARRA; *Form Number:* CMS–10292 (OMB#: 0938–NEW); *Use:* This information is being requested in order that States can submit documentation to CMS for review and approval in order that States can implement the Medicaid program and draw down Federal financial participation. The American Reinvestment and Recovery Act of 2009 (ARRA) provides States with the flexibility to request funds to develop a health information technology vision and road to get to the ultimate goal of meaningful use of certified electronic health records technology. We will be sending State Medicaid Directors letters and templates for the State Medicaid Hit Plan (SMHP), the Planning Advance Planning Document (PAPD) and the Implementation Advance Planning Document (IAPD) to States in an effort to request these changes if they so choose to make the process as simple as possible. *Frequency:* Yearly, once and/or occasionally; *Affected Public:* State, Tribal and Local governments; *Number*

of Respondents: 56; *Total Annual Responses:* 56; *Total Annual Hours:* 280. (For policy questions regarding this collection contact Donna Schmidt at 410–786–5532. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Reinstatement with change of a previously approved collection; *Title of Information Collection:* Business Proposal Forms for Quality Improvement Organizations (QIOs); *Use:* The submission of proposal information by current quality improvement associations (QIOs) and other bidders, on the appropriate forms, will satisfy CMS's need for meaningful, consistent, and verifiable data with which to evaluate contract proposals. The data collected on the forms associated with this information collection request is used by CMS to negotiate QIO contracts. The revised business proposal forms will be useful in a number of important ways. The Government will be able to compare the costs reported by the QIOs on the cost reports to the proposed costs noted on the business proposal forms. Subsequent contract and modification negotiations will be based on historic cost data. The business proposal forms will be one element of the historical cost data from which we can analyze future proposed costs. In addition, the business proposal format will standardize the cost proposing and pricing process among all QIOs. With well-defined cost centers and line items, proposals can be compared among QIOs for reasonableness and appropriateness. *Form Number:* CMS–718–721 (OMB#: 0938–0579); *Frequency:* Reporting—Triennially; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 21; *Total Annual Responses:* 21; *Total Annual Hours:* 1,785. (For policy questions regarding this collection contact Clarissa Whatley at 410–786–7154. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Reinstatement without change of a previously approved collection; *Title of Information Collection:* End Stage Renal Disease (ESRD) Network Semi-Annual Cost Report Forms and Supporting Regulations in 42 CFR 405.2110 and 42 CFR 405.2112; *Use:* Section 1881(c) of the Social Security Act establishes End Stage Renal Disease (ESRD) Network contracts. The regulations found at 42 CFR 405.2110 and 405.2112 designated 18 ESRD Networks which are funded by renewable contracts. These contracts are on 3-year cycles. To better administer the program, CMS is requiring contractors to submit semi-annual cost reports. The purpose of the cost reports is to enable the ESRD Networks to report costs in a standardized manner. This will allow CMS to review, compare and project ESRD Network costs during the life of the contract. *Form Number:* CMS–685 (OMB#: 0938–0657); *Frequency:* Reporting—Semi-annually; *Affected Public:* Not-for-profit institutions; *Number of Respondents:* 18; *Total Annual Responses:* 36; *Total Annual Hours:* 108. (For policy questions regarding this collection contact Victoria Morgan at 410–786–7232. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *April 28, 2010:* OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: March 19, 2010.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2010–7033 Filed 3–26–10; 8:45 am]

BILLING CODE 4120–01–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 the Office of Management and Budget (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, e-mail *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the agency; (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: Federally Qualified Health Centers (FQHC) Application Forms: (OMB No. 0915–0285 Revisions)

HRSA's Bureau of Primary Health Care Federally Qualified Health Centers (FQHCs) are a major component of America's health care safety net, the Nation's "system" of providing health care to low-income and other vulnerable populations. Health Centers care for people regardless of their ability to pay and whether or not they have health insurance. They provide primary and preventive health care, as well as services such as transportation and translation. Many Health Centers also offer dental, mental health and substance abuse care.

FQHC's are administered by the Health Resources and Services Administration's (HRSA) Bureau of Primary Health Care (BPHC). HRSA uses the following application forms to administer and manage the FQHCs. These application forms are used by new and existing FQHCs to apply for grant and non-grant opportunities, renew their grant or non-grant opportunities or change their scope of project.

Estimates of annualized reporting burden are as follows:

Type of application form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
General Information Worksheet	1,034	1	1,034	2.0	2,068
Planning Grant: General Information Worksheet	250	1	250	2.5	625
BPHC Funding Request Summary	1,034	1	1,034	2.0	2,068
Documents on File	1,034	1	1,034	1.0	1,034
Proposed Staff Profile	1,034	1	1,034	2.0	2,068
Income Analysis Form	1,034	1	1,034	5.0	5,170
Community Characteristics	1,034	1	1,034	1.0	1,034
Health Care Plan (Competing)	800	1	1,034	4.0	4,136
Health Care Plan (Non-Competing)	1,034	1	1,034	2.0	2,068
Business Plan (Competing)	800	1	1,034	4.0	4,136
Business Plan (Non-Competing)	1,034	1	1,034	2.0	2,068
Services Provided	1,034	1	1,034	1.0	1,034
Sites Listing	1,034	1	1,034	1.0	1,034
Other Site Activities	700	1	700	0.5	350
Change In Scope (CIS) Site Add Checklist	300	1	300	1.0	300
CIS Site Delete Checklist	200	1	200	1.0	200
CIS Relocation Checklist	200	1	200	1.5	300
CIS Service Add Checklist	100	1	200	1.0	200
CIS Service Delete Checklist	100	1	100	1.0	100
Board Member Characteristics	1,034	1	1,034	1.0	1,034
Request for Waiver of Governance Requirements	150	1	150	1.0	150
Health Center Affiliation Certification	250	1	250	1.0	250
Need for Assistance	900	1	900	3.0	2,700
Emergency Preparedness Form	1,034	1	1,034	1.0	1,034
Points of Contact	800	1	800	0.5	400
EHR Readiness Checklist	250	1	250	1.0	250
Environmental Information and Documentation (EID)	400	1	400	2.0	800
Assurances	900	1	900	.5	450
Equipment List	900	1	900	1.0	900
Other Requirements for Sites	900	1	900	.5	450
Total	1,034	1	21,876	.....	38,411

E-mail comments to *paperwork@hrsa.gov* or mail 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: March 22,2010.

Sahira Rafiullah,

Director, Division of Policy and Information Coordination.

[FR Doc. 2010–6880 Filed 3–26–10; 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: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are 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: SAMHSA Application for Peer Grant Reviewers (OMB No. 0930–0255)—Extension

Section 501(h) of the Public Health Service (PHS) Act (42 U.S.C. 290aa) directs the Administrator of the Substance Abuse and Mental Health Services Administration (SAMHSA) to establish such peer review groups as are needed to carry out the requirements of Title V of the PHS Act. SAMHSA administers a large discretionary grants program under authorization of Title V, and, for many years, SAMHSA has funded grants to provide prevention and treatment services related to substance abuse and mental health.

In support of its grant peer review efforts, SAMHSA desires to continue to expand the number and types of reviewers it uses on these grant review committees. To accomplish that end, SAMHSA has determined that it is important to proactively seek the inclusion of new and qualified representatives on its peer review groups. Accordingly SAMHSA has developed an application form for use by individuals who wish to apply to serve as peer reviewers.

The application form has been developed to capture the essential information about the individual applicants. Although consideration was given to requesting a resume from interested individuals, it is essential to have specific information from all applicants about their qualifications. The most consistent method to accomplish this is through completion of a standard form by all interested persons which captures information about knowledge, education, and experience in a consistent manner from all interested applicants. SAMHSA will use the information provided on the

applications to identify appropriate peer grant reviewers. Depending on their experience and qualifications, applicants may be invited to serve as either grant reviewers or review group chairpersons.

The following table shows the annual response burden estimate.

Number of respondents	Responses/ respondent	Burden/ responses (hours)	Total burden hours
500	1	1.5	750

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, One Choke Cherry Road, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 23, 2010.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. 2010–6870 Filed 3–26–10; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects:

Title: ACF Grantee Survey of the Low Income Home Energy Assistance Program (LIHEAP).

OMB No.: 0970–0076.

Description: The LIHEAP Grantee Survey is an annual data collection activity, which is sent to grantees of the 50 states and the District of Columbia administering the Low Income Home Energy Assistance Program (LIHEAP). The survey is mandatory in order that national estimates of the sources and uses of LIHEAP funds can be calculated in a timely manner; a range can be calculated of State average LIHEAP benefits; and maximum income cutoffs for four-person households can be obtained for estimating the number of low-income households that are income eligible for LIHEAP under the State income standards. The need for the above information is to provide the Administration and Congress with fiscal estimates in time for hearings about LIHEAP appropriations and program performance. The information also is included in the Departments annual LIHEAP Report to Congress. Survey information also will be posted on the Office of Community Services LIHEAP Web site for access by grantees and other interested parties.

Respondents: 50 States and the District of Columbia.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
LIHEAP Grantee Survey	51	1	3.50	178.50

Estimated Total Annual Burden Hours: 178.50.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. *E-mail address: infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection. The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 24, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–6862 Filed 3–26–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Strengthening Communities Fund Program Evaluation.

OMB No.: New Collection.

Description: This proposed information collection activity is to obtain evaluation information from Strengthening Communities Fund (SCF) grantees. Grantees include participants in two SCF grant programs contributing to the economic recovery as authorized in the American Recovery and Reinvestment Act of 2009 (ARRA). The SCF evaluation is an important opportunity to examine the outcomes achieved by the Strengthening Communities Fund in meeting its objective of improving the capacity of

grantees that include Nonprofit organizations and State, Local and Tribal Governments. The evaluation for each program will be designed to assess progress and measure increased organizational capacity of grantees in each of the two SCF programs. The purpose of this request will be to establish the approved baseline instruments for follow-up data collection.

Respondents: SCF Grantees (both the Nonprofit Capacity Building Program and the Government Capacity Building Program) made up of State, local, and Tribal governments, as well as nonprofit organizations.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Nonprofit Capacity Building Program Performance Progress Report (PPR) ..	35	4	1	140
Government Capacity Building Program PPR	49	4	1	196

Estimated Total Annual Burden Hours: 336.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 24, 2010.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2010–6866 Filed 3–26–10; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0001]

Food and Drug Administration/Xavier University Global Medical Device Conference

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public conference.

SUMMARY: The Food and Drug Administration (FDA) Cincinnati District, in co-sponsorship with Xavier University, is announcing a public conference entitled "FDA/Xavier University Global Medical Device Conference." This 3-day public conference includes presentations from key FDA officials, global regulators, and industry experts. The public conference has three separate tracks of interest for quality, regulatory affairs, and clinical research professionals, and is intended for companies of all sizes and employees at all levels.

Dates and Times: The public conference will be held on May 5, 2010, from 8 a.m. to 5 p.m.; May 6, 2010, from 8 a.m. to 5 p.m.; and May 7, 2010, from 8 a.m. to 1 p.m.

Location: The public conference will be held on the campus of Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073 or 513–745–3396.

Contact Persons:

For information regarding this notice: Gina Brackett, Food and Drug Administration, 6751 Steger Dr., Cincinnati, OH 45237, 513–679–2700, ext 167, FAX: 513–679–272, e-mail: *gina.brackett@fda.hhs.gov*.

For information regarding the conference and registration: Marla Phillips, Xavier University, 3800 Victory Pkwy., Cincinnati, OH 45207, 513–745–3073, e-mail: *phillipsm4@xavier.edu*.

Registration: There is a registration fee. The conference registration fees cover the cost of the presentations, training materials, receptions, breakfasts, lunches, dinners, and dinner speakers for the 3 days of the conference. Early registration ends April 5, 2010. Standard registration ends May 4, 2010. There will be onsite registration. The cost of registration is as follows:

TABLE 1.—REGISTRATION FEES[1]

Attendee	Fee by April 5th	Fee by May 4th
Industry	$995	$1,200
Small Business (<100 employees)	$800	$1,000
Academic	$600	$700
Student	$200	$250
FDA Employee	Fee Waived	Fee Waived

[1] The fourth registration from the same company is free.

The following forms of payment will be accepted: American Express, Visa, Mastercard, and company checks.

To register online for the public conference, please visit the "Registration" link on the conference Web site at *http://www.XavierMedCon.com*. FDA has verified the Web site address, but is not responsible for subsequent changes to the Web site after this document publishes in the **Federal Register**.

To register by mail, please send your name, title, firm name, address, telephone and fax numbers, e-mail, and payment information for the fee to Xavier University, Attention: Sue Bensman, 3800 Victory Parkway, Cincinnati, OH 45207. An e-mail will be sent confirming your registration.

Attendees are responsible for their own accommodations. The conference headquarter hotel is the Downtown

Cincinnati Hilton Netherlands Plaza, 35 West 5th Street, Cincinnati, OH, 45202, 513–421–9100. To make reservations online, please visit the "Venue/ Logistics" link at *http://www.XavierMedCon.com* to make reservations.

If you need special accommodations due to a disability, please contact Marla Phillips (see *Contact Persons*) at least 7 days in advance of the conference.

SUPPLEMENTARY INFORMATION: The public conference helps fulfill the Department of Health and Human Services and FDA's important mission to protect the public health. The conference will provide those engaged in FDA-regulated medical devices (for humans) with information on the following topics:

- Global compliance,
- Global approval process,
- Global harmonization,
- Recalls and corrections and removals,
- Common 483 observations,
- What happens after an inspection,
- Medical device reports,
- Regulatory impact of design and process changes,
- Integrating internal and external resources for clinical trials,
- New ways of doing biostatistics,
- Innovative clinical study design,
- Challenges in conducting global clinical trials,
- Comparison of design history file and dechnical dossier,
- Integrating risk management in device/combination products,
- Design controls: Human factors,
- Labeling and promotion,
- Corrective and preventive actions,
- International filing requirements,
- Promotion of device prior to approval,
- Combination product filings—tips for successful application,
- The role of information technology in clinical trials and post-approval process,
- Bioresearch monitoring early intervention initiatives for electronic records, and
- Handling images and other non-traditional electronic data.

FDA has made education of the drug and device manufacturing community a high priority to help ensure the quality of FDA-regulated drugs and devices. The conference helps to achieve objectives set forth in section 406 of the Food and Drug Administration Modernization Act of 1997 (21 U.S.C. 393), which includes working closely with stakeholders and maximizing the availability and clarity of information to stakeholders and the public. The conference also is consistent with the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) by providing outreach activities by Government agencies to small businesses.

Dated: March 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6865 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0001]

Guidance for Industry on Standards for Securing the Drug Supply Chain—Standardized Numerical Identification for Prescription Drug Packages; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Standards for Securing the Drug Supply Chain-Standardized Numerical Identification for Prescription Drug Packages." This guidance is being issued under the Federal Food, Drug, and Cosmetic Act (the act), which requires FDA to develop standards for standardized numerical identifiers for prescription drugs.

DATES: Submit written or electronic comments on agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave, Bldg. 51, rm. 2201, Silver Spring, MD 20993–0002; or the Office of Communication, Outreach and Development (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448. The guidance may also be obtained by mail by calling CBER at 1–800–835–4709 or 301–827–1800. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Division of Docket Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT:

Ilisa B.G. Bernstein, Office of the Commissioner/Office of Policy, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–4840, e-mail: *ilisa.bernstein@fda.hhs.gov*;

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210; or

Meredith Francis, Center for Drug Evaluation and Research, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–3476, email: *Meredith.frances@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled "Standards for Securing the Drug Supply Chain-Standardized Numerical Identification for Prescription Drug Packages." In the **Federal Register** of January 16, 2009 (74 FR 3054), a draft version of this guidance was made available for public comment.

On September 27, 2007, the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Public Law 110–85) was signed into law. Section 913 of this legislation created section 505D of the act, which requires the Secretary of Health and Human Services (the Secretary) to develop standards and identify and validate effective technologies for the purpose of securing the drug supply chain against counterfeit, diverted, subpotent, substandard, adulterated, misbranded, or expired drugs. Section 505D of the act directs the Secretary to consult with specific entities to prioritize and develop standards for the identification, validation, authentication, and tracking and tracing of prescription drugs. The statute also directs that no later than 30 months after the date of enactment of FDAAA, the Secretary shall develop a standardized numerical identifier (SNI) to be applied to a prescription drug at the point of manufacturing and repackaging at the package or pallet level, sufficient to facilitate the identification, validation, authentication, and tracking and tracing of the prescription drug. An SNI applied

at the point of repackaging is to be linked to the SNI applied at the point of manufacturing, and to the extent practicable, the SNI should be harmonized with international consensus standards for such an identifier (see section 505D(b)(2) of the act). The provisions in section 505D(b) of the act complement and build on FDA's longstanding efforts to further secure the U.S. drug supply.

The agency received 44 comments in response to our request for public comment on the draft guidance. FDA also sought public comment on specific questions related to development of an SNI by opening a docket to receive information (73 FR 14988, March 20, 2008). We received 59 comments from a range of stakeholders, including manufacturers, wholesalers, pharmacies, trade and health professional organizations, technology vendors, health professionals, consumers, and State governments. We also shared both of these requests with State governments, other Federal agencies, and with foreign governments. The standards included in this guidance are based on information received in response to these requests for comment and the agency's familiarity with identification standards already in use for certain prescription biologics. All of the comments that we received have been considered and the guidance has been revised as appropriate.

The guidance is intended to be the first of several guidances and regulations that FDA may issue to implement section 505D of the act and its issuance is intended to assist with the development of standards and systems for identification, authentication, and tracking and tracing of prescription drugs. The guidance defines SNI for package-level identification only. For the purpose of this guidance, FDA considers the package to be the smallest unit placed into interstate commerce by the manufacturer or the repackager that is intended by that manufacturer or repackager, as applicable, for individual sale to the pharmacy or other dispenser of the drug product. Evidence that a unit is intended for individual sale, and thus constitutes a separate "package" for purposes of this guidance, would include evidence that it is accompanied by labeling intended to be sufficient to permit its individual distribution. This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115).

The guidance does not address how to link a repackager SNI to a manufacturer SNI, nor does it address standards for prescription drug SNI at levels other than the package-level including, for example, the case and pallet levels. Standards for track and trace, authentication, and validation are also not addressed in this guidance because this guidance only addresses the standardized numerical identifier itself and not implementation or application issues.

The guidance represents the agency's current thinking on standards for drug supply chain security-standardized numerical identification for prescription drug packages. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information regarding labeling requirements for expiration date and lot numbering in 21 CFR. §§ 211.130, 211.137, 201.17, and 201.18 have been approved under OMB Control No. 0910–0139, and in §§ 610.60 and 610.61 have been approved under OMB Control No. 0910–0338.

III. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) electronic or written comments regarding this document. Submit a single copy of electronic or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/Guidance/index.htm*, *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, or *http://www.regulations.gov*.

Dated: March 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6863 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; Report of an Altered System of Records

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of an Altered System of Records (SOR).

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, the Health Resources and Services Administration (HRSA) is publishing notice of a proposal to alter the system of records for Health Professions Planning and Evaluation (SORN #09–15–0046; 63FR14124).

The purpose of these alterations is to change the name, to update addresses, authority for maintenance, to improve clarity and to add a new routine use. The routine use is to allow the Department to use information in the system of records for responding to potential breaches to the security or confidentiality of records in the system. These changes will have no known or perceived adverse effects on individual privacy.

DATES: HRSA filed an altered system report with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 1, 2010. To ensure all parties have adequate time in which to comment, the altered systems, including the routine uses, will become effective 30 days from the publication of the notice or 40 days from the date it was submitted to OMB and Congress, whichever is later, unless HRSA receives comments that require alterations to this notice.

ADDRESSES: Please address comments to Associate Administrator, Health Resources and Services Administration, 5600 Fishers Lane, Room 9A–18, Rockville, Maryland 20857. Comments received will be available for inspection at this same address from 9 a.m. to 3

p.m. (Eastern Standard Time Zone), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Director, Office of Workforce Policy and Performance Management, 5600 Fishers Lane, Room 9A–18, Rockville, MD (301) 443–0367. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: HRSA has completed the annual review of its systems of records and is publishing changes which affect the public's right or need to know, such as routine uses, system deletions, title changes, and changes in the system location of records, or the addresses of systems managers.

1. System of records, 09–15–0046, Health Professions Planning and Evaluation, has been renamed to Health Professions Analysis and Evaluation. The System Manager's name and address has been updated, and the list of record storage has added "electronic files," and card files, microfilm, and microfiche have been deleted as these storage devices have not been utilized. Under notification and records access procedures, the words "for proof of identity" have been added to clarify the requirements for identification.

2. A new routine use (#5) has been added to implement OMB Memorandum M–07–16, Safeguarding Against and Responding to the Breach of Personally Identifiable Information.

3. The authorities for maintenance of the system have been updated and modified. Authorized personnel are limited to HRSA staff and contractor personnel directly involved in data collection, compilation, and analysis. The specific data items collected and maintained will be determined by the needs of the individual project and restricted to the minimum set necessary to accomplish project objectives.

Dated: March 17, 2010.

Mary K. Wakefield,

Administrator.

System Number: 09–15–0046

SYSTEM NAME:

Health Professions Analysis and Evaluation, HHS/HRSA/BHPr.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is an umbrella system comprising separate sets of records located either in the organizations responsible for conducting evaluations or at the sites of programs or activities under evaluation. Locations include the Health Resources and Services Administration (HRSA) facilities in Rockville, Maryland (*see* address of System Manager below), or facilities of contractors of HRSA. Write to the System Manager for a list of current locations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Health professionals and students in the various health professions who are the subjects of studies or evaluations being conducted by HRSA. Physicians, dentists, pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, nurses, allied health personnel, medical technologists, chiropractors, clinical psychologists, and other health personnel may be included.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, address, health profession, education history, academic grades, employment history, nationality, race, ethnicity, economic background, and sex. The specific data items collected and maintained are determined by the needs of the individual project and are restricted to the minimum set necessary to accomplish project objectives.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority is found in the following sections of the Public Health Service Act; section 761 of the Public Health Service Act (42 U.S.C. 294n), Health Professions Workforce Information and Analysis; section 792 of the Public Health Service Act (42 U.S.C. 295k), Health Professions Data.

PURPOSE(S) FOR RECORDS IN THIS SYSTEM:

The Health Resources and Services Administration uses various records in this system to identify problems in the health care training and delivery systems to plan programs to correct those problems, and to evaluate the effectiveness of the resultant programs. The agency assesses the current supply of health professionals and predicts the supply needs of the future. The agency determines nationwide requirements as well as the needs of specific areas. The agency also collects data on the educational system which supplies health professionals and on specific health education programs. The data are used to develop and test new methods of training and utilizing health professionals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure may be made to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

2. A record may be disclosed for a research purpose, when the Department: (a) Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained; (b) Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring; (c) Has required the recipient to—(1) Establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) In emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law; and (d) Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

3. Disclosure may be made to HHS contractors and their staff, in order to accomplish any of the purposes of the system of records. The recipients are required to protect such records from improper disclosure and to maintain Privacy Act safeguards.

4. The Department may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) Any HHS employee in his or her official capacity; or (c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation

or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records were collected.

5. The Department may disclose information to appropriate Federal agencies and Department contractors that have a need to know the information for the purpose of assisting the Department's efforts to respond to a suspected or confirmed breach of the security or confidentiality of information maintained in this system of records, and the information disclosed is relevant and necessary for that assistance.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

1. *Storage:* Electronic files, file folders, magnetic tape, and disk storage. The needs of each project determine the types of storage actually used.

2. *Retrievability:* By name or by an assigned number.

3. *Safeguards:* Locked building, locked rooms, locked file cabinets, personnel screening, locked computer rooms and computer tape vault, guard service, password protection of automated records and limited access to only authorized personnel may be used. Particular safeguards are selected as appropriate to the type of records included in each project. Authorized personnel are limited to HRSA staff and contractor personnel directly involved in data collection, compilation, and analysis. (Safeguards are in accordance with Part 6, ADP Systems Security, of the Department's Information Resources Management Manual, with Chapter 45–13, Safeguarding Records Contained in Systems of Records, of the Department's General Administration Manual, and with supplementary Chapter PHS. 45–13.)

4. *Retention and Disposal:* The contractor removes personal identifiers and destroys the records when they are no longer needed, as appropriate to the specific project. (Records may be retired to a Federal Records Center and subsequently disposed of in accordance with the Records Control Schedule of the Health Resources and Services Administration). You may obtain a copy of the disposal standard for a particular project by writing to the System Manager.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Workforce Policy and Performance Management, Bureau of Health Professions, HRSA, 5600 Fishers Lane, Room 9A–18, Rockville, MD 20857.

NOTIFICATION PROCEDURE:

Requests concerning whether the system contains records about an individual should be made to the Systems Manager.

Request in person: A subject individual who appears in person at a specific location seeking access or disclosure of records relating to him/her shall provide his/her name, current address, and at least one piece of tangible identification such as driver's license, passport, voter registration card, or union card. Identification papers with current photographs are preferred but not required. Additional identification may be requested when there is a request for access to records which contain an apparent discrepancy between information contained in the records and that provided by the individual requesting access to the records. Where the subject individual has no identification papers, the responsible agency official shall require that the subject individual certify in writing that he/she is the individual who he/she claims to be and that he/she understands that the knowing and willful request or acquisition of a record concerning an individual under false pretenses is a criminal offense subject to a $5,000 fine.

Requests by mail: A written request must contain the name and address of the requester and his/her signature, which is either notarized to verify his/her identify or includes a written certification that the requester is a person he/she claims to be and that he/she understands that the knowing and willful request or acquisition of records pertaining to an individual under false pretenses is a criminal offense subject to a $5,000 fine.

Requests by telephone: Because positive identification of the caller cannot be established, no requests by telephone will be honored.

RECORDS ACCESS PROCEDURES:

To obtain access to your record, contact the System Manager and provide suitable identification for proof of identity, a reasonable description of the record and, if possible, information about the specific project. You may also request a list of accountable disclosures that have been made of your record.

CONTESTING RECORDS PROCEDURES:

To correct your record, contact the System Manager and provide:

a. Suitable identification for proof of identity,

b. A reasonable description of the record,

c. The specific information you want corrected, and

d. A precise description of the correction, with supporting justification. The right to contest records is limited to information which is incomplete, irrelevant, or untimely (obsolete).

RECORD SOURCE CATEGORIES:

Subject individuals, State and local health departments, other health providers, health professions schools, and health professions associations may provide information depending on the individual project involved.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

[FR Doc. 2010–6878 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0156]

Advancing the Development of Diagnostic Tests and Biomarkers for Tuberculosis; Public Workshop; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop; request for comments.

The Food and Drug Administration (FDA) in partnership with the Centers for Disease Control and Prevention (CDC) and the National Institute of Allergy and Infectious Diseases (NIAID) is announcing a public workshop entitled "Advancing the Development of Diagnostic Tests and Biomarkers for Tuberculosis (TB)." The purpose of the workshop is to provide an environment for FDA, CDC, and NIAID to engage other interested parties in identifying intellectual and procedural gaps in the current development of TB diagnostic tests, and in exploring models and strategies that would expedite the development of new diagnostic tests and biomarkers for TB.

Date and Time: The public workshop will be held on June 7 and 8, 2010, from 8 a.m. to 5 p.m.

Location: The public workshop will be held at the National Labor College,

10000 New Hampshire Ave., Silver Spring, MD 20903.

Contact Person: Elizabeth Callaghan, Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3458, *Elizabeth.Callaghan@fda.hhs.gov*; or Nancy Masiello, Office of Critical Path Programs (HF–18), Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1660, *Nancy.Masiello@fda.hhs.gov*.

Registration: Persons interested in attending the workshop must register by close of business, June 3, 2010. If you wish to attend this public workshop, you must register by e-mail at *tbdiagmtg@fda.hhs.gov*. Those without e-mail access may register by contacting one of the persons listed in the *Contact Person* section of this document. When registering, you must provide your name, title, company, or organization (if applicable), address, phone number, and e-mail address (if applicable). There is no fee to register for the public workshop and registration will be on a first-come, first-served basis. Early registration is recommended because seating is limited. Registration on the day of the public workshop will be permitted on a space-available basis beginning at 7:30 a.m.

If you need special accommodations due to a disability, please contact one of the persons listed in the *Contact Person* section of this document at least 14 days prior to the workshop.

Comments: FDA, CDC, and NIAID are holding this public workshop to obtain information about developing new diagnostic tests and biomarkers for TB. The deadline for submitting comments regarding this public workshop is August 8, 2010.

Regardless of attendance at the public workshop, interested persons may submit written or electronic comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION:

I. Background

Between the mid-1980s and early 1990s, reports of TB in the United States increased, after years of decline. This increase was associated with a weakened network of TB services; the human immunodeficiency virus (HIV) epidemic; increased immigration of persons from endemic areas for TB; transmission of TB in surroundings with higher risk of exposure (e.g., hospitals, prisons); and the emergence of drug-resistant TB. However, reported TB cases substantially decreased in the mid- to late 1990s with renewed efforts on TB control and prevention, and a major focus on resources.

In 2000, The National Academy of Sciences' Institute of Medicine (IOM) issued a report[1] concluding that TB can be eliminated as a public health threat in the United States with appropriate funding for additional prevention and control programs, and development of new tools.

In 2003, the Federal TB Task Force (FTBTF) issued a plan[2] to implement the IOM recommendations. A reconvened FTBTF issued a plan in 2009[3] specifically for combating multidrug-resistant TB (MDR TB) and extensively drug-resistant TB (XDR TB). Both plans addressed domestic and global strategies, including partnerships with global agencies, as well as detailed action steps and specific agency roles.

II. Purpose of the Public Workshop

The workshop is intended to provide an environment for FDA, CDC, and NAID to engage other interested parties in identifying intellectual and procedural gaps in the current development of TB diagnostic tests, and in exploring models and strategies that would expedite the development of new diagnostic tests and biomarkers for TB. Invited experts will address current research and its barriers; both regulatory and scientific perspectives on the development of new diagnostic tests and biomarkers for TB; resources for developing new TB diagnostic tests; and components of and requirements for a TB specimen repository. At designated times throughout the workshop, there will be short discussions followed by question and answer sessions. Background information on the public workshop, registration information, the agenda, information about lodging, and other relevant information will be posted, as it becomes available, on the Internet at *http://www.fda.gov/ScienceResearch/SpecialTopics/CriticalPathInitiative/UpcomingEventsonCPI/ucm203262.htm*.

III. Transcripts

Please be advised that as soon as a transcript is available, it will be accessible at *http://www.regulations.gov*. It may be viewed at the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. A transcript will also be available in either hardcopy or on CD–ROM, after submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (HFI–35), Office of Management Programs, Food and Drug Administration, 5600 Fishers Lane, rm. 6–30, Rockville, MD 20857.

Dated: March 23, 2010.

Leslie Kux,

Acting Assistant Commissioner for Policy.

[FR Doc. 2010–6864 Filed 3–26–10; 8:45 am]

BILLING CODE 4160–01–S

[1] Institute of Medicine, *Ending Neglect: The Elimination of Tuberculosis in the United States,* Committee on the Elimination of Tuberculosis in the United States, Division of Health Promotion and Disease Prevention, Institute of Medicine, 2000.

[2] The Federal Tuberculosis Task Force, *Federal Tuberculosis Task Force Plan in Response to the Institute of Medicine Report, Ending Neglect: The Elimination of Tuberculosis in the United States,* Atlanta, GA: U.S. Department of Health and Human Services, CDC, 2003.

[3] "Plan to Combat Extensively Drug-Resistant Tuberculosis: Recommendations of the Federal Tuberculosis Task Force," *Morbidity and Mortality Weekly Report, Recommendations and Reports*, 58 (RR–3):1–43, February 13, 2009.

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, OMB No. 1660–NEW; FEMA Preparedness Grants: Port Security Grant Program (PSGP)

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; new information collection; OMB No. 1660–NEW; FEMA Form 089–5.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information

collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before April 28, 2010.

ADDRESSES: 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 the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA–Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: FEMA Preparedness Grants: Port Security Grant Program (PSGP).

Type of information collection: New information collection.

OMB Number: 1660–NEW.

Form Titles and Numbers: FEMA Form 089–5, PSGP Investment Justification. A form has been removed since publication of the 60-day **Federal Register** Notice at 74 FR 59234, Nov. 17, 2009.

Abstract: The PSGP is an important tool among a comprehensive set of measures to help strengthen the Nation against risks associated with potential terrorist attacks. DHS/FEMA uses the information to evaluate applicants' familiarity with the national preparedness architecture and identify how elements of this architecture have been incorporated into regional/state/local planning, operations, and investments.

Affected Public: State, Local or Tribal Government; Business or other for-profit. The affected public has changed since publication of the 60-day **Federal Register** Notice at 74 FR 59234, Nov. 17, 2009.

Estimated Number of Respondents: 478. The estimated number of respondents has increased since publication of the 60-day **Federal Register** Notice at 74 FR 59234, Nov. 17, 2009.

Frequency of Response: On Occasion.

Estimated Average Hour Burden per Respondent: 306.

Estimated Total Annual Burden Hours: 21,822 hours. The estimated total annual burden hours has increased since publication of the 60-day **Federal Register** Notice at 74 FR 59234, Nov. 17, 2009.

Estimated Cost: There is no annual reporting or recordkeeping costs associated with this collection.

Dated: March 22, 2010.

Larry Gray,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6855 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–78–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

Agency Information Collection Activities: Proposed Collection; Comment Request, 1660–0033; Residential Basement Flood Proofing Certification

[Docket ID: FEMA–2010–0011]

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0033; FEMA Form 086–0–24, Residential Basement Floodproofing Certificate.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the certification of flood proof residential basements in Special Flood Hazard Areas.

DATES: Comments must be submitted on or before May 28, 2010.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2010–0011. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2010–0011 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available via the Privacy Notice link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Mary Ann Chang, Insurance Examiner, Mitigation Directorate, (202) 212–4712 for additional information. You may contact the Records Management Division for copies of the proposed collection of information at facsimile number (202) 646–3347 or email address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: The National Flood Insurance Program (NFIP) is authorized by Public Law 90–448 (1968) and expanded by Public Law 93–234 (1973). The National Flood Insurance Act of 1968 requires that the Federal Emergency Management Agency (FEMA) provide flood insurance. Title 44 CFR 60.3, Floodplain management criteria for flood-prone areas, ensures that communities participating in the NFIP, in Special Flood Hazard Areas (SFHAs), have basement construction at the lowest floor elevation or above the 100 year flood elevation, or Base Flood Elevation. This requirement is to reduce the risks of flood hazards to new buildings in SFHAs and reduce insurance rates. Title 44 CFR 60.6(c) allows communities to apply for an exception to permit and certify the construction of flood proof residential basements in SFHAs. This certification must ensure that the community has demonstrated that the areas of special flood hazard, in which residential basements will be permitted, are subject to shallow and low velocity flooding and adequate flood warning time to notify residents of impending floods.

Collection of Information

Title: Residential Basement Flood Proofing Certification.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0033.

Form Titles and Numbers: FEMA Form 086–0–24, Residential Basement Floodproofing Certificate.

Abstract: The Residential Basement Floodproofing Certification is required to receive an exception by FEMA to allow construction of residential basements in Special Flood Hazard areas. Homeowners must provide the information required by the form for this collection so that assurance is provided that the basement design and methods of construction are in accordance with floodplain management ordinances. Homeowners who receive this certification are granted discounts on their flood insurance premiums.

Affected Public: Business or other for-profit.

Estimated Total Annual Burden Hours: 325 Hours.

Type of respondent	Form name/form number	No. of respondents	No. of responses per respondent	Total No. of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate*	Total annual respondent cost
Business or other for-profit ..	Residential Basement Floodproofing Certificate/ FEMA Form 086–0–24.	100	1	100	3.25	325	$48.08	$15,626
Total	.....	100	.....	100	.....	325	.....	15,626

Estimated Cost: The estimated annual and maintenance cost to respondents for this collection is estimated to be $35,000. There are no capital or start-up costs for this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) 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; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Dated: March 23, 2010.

Larry Gray,

Director, Records Management Division, Mission Support Bureau, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 2010–6853 Filed 3–26–10; 8:45 am]

BILLING CODE 9110–11–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs And Border Protection

Agency Information Collection Activities: United States-Caribbean Basin Trade Partnership Act

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 60-Day Notice and request for comments; Revision of an existing collection of information: 1651–0083.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, U.S. Customs and Border (CBP) invites the general public and other Federal agencies to comment on an information collection requirement concerning the United States-Caribbean Basin Trade Partnership Act. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments should be received on or before May 28, 2010, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs and Border Protection, *Attn.:* Tracey Denning, U.S. Customs and Border Protection, Office of Regulations and Rulings, 799 9th Street, NW., 7th Floor, Washington, DC 20229–1177, at 202–325–0265.

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3506(c)(2)(A)). The comments should address the accuracy of the burden estimates and ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology, as well as other relevant aspects of the information collection. The comments that are submitted will be summarized and included in the CBP request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document CBP is soliciting comments concerning the following information collection:

Title: United States-Caribbean Basin Trade Partnership Act.

OMB Number: 1651–0083.

Form Number: 450.

Abstract: This collection of information is required to implement the duty preference provisions of the United States-Caribbean Basin Trade Partnership Act (CBTPA). The provisions of CBTPA were adopted by the U.S. with the enactment of the Trade and Development Act of 2000 (Pub. L.106–200). The objective of the CBTPA is to expand trade benefits to countries in the Caribbean Basin. For preferential treatment under CBTPA, importers are required to have CBTPA Certification of Origin (Form 450) in their possession at the time of the claim, and to provide it to CBP upon request. CBP uses the information provided on Form 450 to determine if an importer is entitled to preferential duty treatment under the provisions of the CBTPA.

Current Actions: This submission is being made to revise the burden hours as a result of revised estimates of the number of Form 450s are prepared and/or submitted to CBP.

Type of Review: Extension with a change to the burden hours.

Affected Public: Businesses.

Estimated Number of Respondents: 84.

Estimated Number of Responses per Respondent: 57.2.

Estimated Number of Total Annual Responses: 4,804.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 1,201.

Dated: March 23, 2010.

Tracey Denning,

Agency Clearance Officer, U.S. Customs and Border Protection.

[FR Doc. 2010–6871 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1877–DR; Docket ID FEMA–2010–0002]

Iowa; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Iowa (FEMA–1877–DR), dated February 25, 2010, and related determinations.

DATES: *Effective Date:* March 19, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Iowa is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 25, 2010.

Buena Vista, Dickinson, O'Brien, Palo Alto, Plymouth, and Pocahontas Counties for Public Assistance.

Buena Vista, Dickinson, O'Brien, Palo Alto, and Plymouth Counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6945 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1876–DR; Docket ID FEMA–2010–0002]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1876–DR), dated February 25, 2010, and related determinations.

DATES: *Effective Date:* March 22, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of February 25, 2010.

Alfalfa, Beckham, Bryan, Caddo, Carter, Cherokee, Creek, Dewey, Greer, Harmon, Haskell, Kiowa, LeFlore, Logan, Mayes, McCurtain, McIntosh, Osage, Pawnee, Pittsburg, Roger Mills, Seminole, Wagoner, Washington, and Washita Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6935 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1883–DR; Docket ID FEMA–2010–0002]

Oklahoma; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Oklahoma (FEMA–1883–DR), dated March 5, 2010, and related determinations.

DATES: *Effective Date:* March 22, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Oklahoma is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of March 5, 2010.

Beaver, Beckham, Blaine, Canadian, Cherokee, Craig, Creek, Custer, Garvin, Grant, Lincoln, Logan, Major, Mayes, Murray, Nowata, Okfuskee, Ottawa, Pawnee, Rogers, Sequoyah, Texas, Wagoner, and Washington Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6914 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3309–EM; Docket ID FEMA–2010–0002]

North Dakota; Emergency and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of an emergency for the State of North Dakota (FEMA–3309–EM), dated March 14, 2010, and related determinations.

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

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 14, 2010, the President issued an emergency declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5207 (the Stafford Act), as follows:

I have determined that the emergency conditions in certain areas of the State of North Dakota resulting from flooding beginning on February 26, 2010, and continuing, are of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (''the Stafford Act''). Therefore, I declare that such an emergency exists in the State of North Dakota.

You are authorized to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act, to save lives and to protect property and public health and safety, and to lessen or avert the threat of a catastrophe in the designated areas. Specifically, you are authorized to provide assistance for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program. This assistance excludes regular time costs for subgrantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs. In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal emergency assistance and administrative expenses.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, Department of Homeland Security, under Executive Order 12148, as amended, Justo Hernandez, of FEMA is appointed to act as the Federal Coordinating Officer for this declared emergency.

The following areas of the State of North Dakota have been designated as adversely affected by this declared emergency:

Barnes, Benson, Burleigh, Cass, Dickey, Emmons, Foster, Grand Forks, LaMoure, Mercer, Nelson, Pembina, Ramsey, Ransom, Richland, Stutsman, Traill, and Walsh Counties and the Spirit Lake Reservation for emergency protective measures (Category B), including direct Federal assistance, under the Public Assistance program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6913 Filed 3–26–10; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning a Wood Chest

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of a certain wood chest. Based upon the facts presented, CBP has concluded in the final determination that the U.S. is the country of origin of the wood chest for purposes of U.S. government procurement.

DATES: The final determination was issued on March 23, 2010. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination within April 28, 2010.

FOR FURTHER INFORMATION CONTACT: Elif Eroglu, Valuation and Special Programs Branch: (202) 325–0277.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on March 23, 2010, pursuant to subpart B of part 177, Customs Regulations (19 CFR part 177, subpart B), CBP issued a final determination concerning the country of origin of the wood chest which may be offered to the U.S. Government under an undesignated government procurement contract. This final determination, in Headquarters Ruling Letter (''HQ'') H083693, was issued at the request of J. Squared, Inc. d/b/a University Loft Company under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the wood chest, assembled in the U.S. from parts made in Malaysia and the U.S., is substantially transformed in the U.S., such that the U.S. is the country of origin of the finished article for purposes of U.S. government procurement.

Section 177.29, Customs Regulations (19 CFR 177.29), provides that notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR

177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: March 23, 2010.

Myles B. Harmon,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

Attachment

HQ H083693

March 23, 2010
OT:RR:CTF:VS H083693 EE
CATEGORY: Marking
Lisa A. Crosby
Sidley Austin, LLP
1501 K Street, NW
Washington, D.C. 20005
RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. § 2511); Subpart B, Part 177, CBP Regulations; Wood Chest
Dear Ms. Crosby:

This is in response to your correspondence of November 4, 2009, requesting a final determination on behalf of J. Squared, Inc. d/b/a University Loft Company ("ULC"), pursuant to subpart B of part 177, Customs and Border Protection ("CBP") Regulations (19 CFR § 177.21 et seq.). Under the pertinent regulations, which implement Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purpose of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

This final determination concerns the country of origin of the G10624–30 Wood Chest. We note that ULC is a party-at-interest within the meaning of 19 CFR § 177.22(d)(1) and is entitled to request this final determination.

FACTS:

You describe the pertinent facts as follows. ULC's principal place of business is in Greenfield, Indiana. The company manufactures the wood chest at its facility in Greenfield, Indiana. The wood chest is a self-centering, stackable, two-drawer chest made of environmentally farmed hevea brasiliensis wood in a natural finish. Its dimensions are: 36¼″ wide, 21$^{13}/_{16}$″ deep and 18$^{11}/_{16}$″ high. ULC designed this chest wholly within the U.S. ULC makes the wood chest from U.S. and imported components at its facility in Greenfield, Indiana.

You state that the wood chest contains over twenty components plus screws and other hardware. All of the materials are of U.S. or Malaysian origin. Production and packaging of the chest occurs in the U.S.

You submitted the bill of materials for the wood chest. Of the total cost of production, 40 percent is attributable to materials of U.S. origin, U.S. warehouse overhead and U.S. labor costs (including overhead). Some of the components from Malaysia include the following: drawers, panels, drawer frame pieces, top shelf frame pieces, drawer slides, and screws. The laminate top originates in the U.S. You submitted a photographic illustration of the U.S. production. The production of the wood chest takes approximately forty-one minutes. You claim that each step is completed by skilled workers who undergo an extensive training process.

The production of the wood chest begins by staging the left and right side panels for assembly. These panels are moved into the slide attachment workstation, where two drawer slides are drilled into place on each side panel using screws. A jig is used to ensure exact placement of the drawer slides. Next, two drawer frame assemblies and one top frame assembly are constructed from wood pieces imported from Malaysia. The wood pieces are hand-fitted together with glue and measured against a jig to ensure the frames meet exact specifications. After the various frame pieces are glued together, the frame is clamped and bradded to maintain a tight fit until the glue dries. The three frame assemblies (two drawer frames and one top frame) are then attached to the left and right side panel assemblies using screws and glue. The laminate top (U.S.-origin) and back panel are then affixed to the frame/side panel assembly using glue and screws.

On a separate production line, drawer assemblies are staged for production. A jig is used to align the drawer slides and attach them to the drawer assemblies with screws. The drawer assemblies with slides are then inserted into the chest and adjustments are made as necessary to meet specifications and ensure a smooth operation.

After final assembly, the wood chest undergoes a quality control review, during which the contract manufacturer and "Friends of the World" labels (reflecting that the wood is sustainably harvested) are affixed to the inside of the top drawer. The chest is then packaged using shrink-wrap and recycled cardboard. Finally, the packaged chest is palletized and labeled for shipment/delivery.

ISSUE:

What is the country of origin of the wood chest for the purpose of U.S. government procurement?

LAW AND ANALYSIS:

Pursuant to subpart B of part 177, 19 CFR § 177.21 et seq., which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. § 2511 et seq.), CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain "Buy American" restrictions in U.S. law or practice for products offered for sale to the U.S. Government.

Under the rule of origin set forth under 19 U.S.C. § 2518(4)(B):

An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

See also, 19 CFR § 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Acquisition Regulations. See 19 CFR § 177.21. In this regard, CBP recognizes that the Federal Acquisition Regulations restrict the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. See 48 CFR § 25.403(c)(1). The Federal Acquisition Regulations define "U.S.-made end product" as:

* * *an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

48 CFR § 25.003.

In order to determine whether a substantial transformation occurs when components of various origins are assembled into completed products, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and

whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, factors such as the resources expended on product design and development, extent and nature of post-assembly inspection and testing procedures, and the degree of skill required during the actual manufacturing process may be relevant when determining whether a substantial transformation has occurred. No one factor is determinative.

In *Carlson Furniture Industries* v. *United States*, 65 Cust. Ct. 474 (1970), the U.S. Customs Court ruled that U.S. operations on imported chair parts constituted a substantial transformation, resulting in the creation of a new article of commerce. After importation, the importer assembled, fitted, and glued the wooden parts together, inserted steel pins into the key joints, cut the legs to length and leveled them, and in some instances, upholstered the chairs and fitted the legs with glides and casters. The court determined that the importer had to perform additional work on the imported chair parts and add materials to create a functional article of commerce. The court found that the operations were substantial in nature, and more than the mere assembly of the parts together.

In HQ W563456, dated July 31, 2006, CBP held that certain office chairs assembled in the U.S. were a product of the U.S. for purposes of U.S. government procurement. The office chairs were assembled from seventy U.S. and foreign components. The imported components alone were insufficient to create the finished chairs and substantial additional work and materials were added to the imported components in the U.S. to produce the finished chairs. In finding that the imported parts were substantially transformed in the U.S., CBP stated that the components lost their individual identities when they became part of the chair as a result of the U.S. assembly operations and combination with U.S. components. In HQ 561258, dated April 15, 1999, CBP determined that the assembly of numerous imported workstation components with the U.S.-origin work surface into finished workstations constituted a substantial transformation. CBP held that the imported components lost their identity as leg brackets, drawer units, panels etc. when they were assembled together to form a workstation.

This case involves twenty main components which are proposed to be assembled in the U.S., largely by skilled workers. The laminate top, of U.S. origin, will be assembled into the wood chest in a twenty step process which will take approximately forty-one minutes. Under the described assembly process, we find that the foreign components lose their individual identities and become an integral part of a new article, the wood chest, possessing a new name, character and use. Based upon the information before us, we find that the components that are used to manufacture the wood chest, when combined with a U.S. origin laminate top, are substantially transformed as a result of the assembly operations performed in the U.S., and that the country of origin of the wood chest for government procurement purposes is the U.S.

HOLDING:

The imported components that are used to manufacture the wood chest are substantially transformed as a result of the assembly operations performed in the U.S. Therefore, we find that the country of origin of the wood chest for government procurement purposes is the U.S.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR § 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR § 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR § 177.30, any party-at-interest may, within 30 days after publication of the **Federal Register** notice referenced above, seek judicial review of this final determination before the Court of International Trade.

Sincerely,

Myles B. Harmon,

Acting Executive Director, Regulations and Rulings, Office of International Trade.

[FR Doc. 2010–6832 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1883–DR; Docket ID FEMA–2010–0002]

Oklahoma; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–1883–DR), dated March 5, 2010, and related determinations.

DATES: *Effective Date:* March 5, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 5, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Oklahoma resulting from a severe winter storm during the period of January 28–30, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Oklahoma.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Gregory W. Eaton, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Oklahoma have been designated as adversely affected by this major disaster:

Alfalfa, Caddo, Cleveland, Comanche, Cotton, Delaware, Dewey, Ellis, Grady, Greer, Harmon, Haskell, Hughes, Jackson, Kiowa, LeFlore, McClain, Muskogee, Okmulgee, Pontotoc, Pottawatomie, Roger Mills, Seminole, Stephens, and Washita Counties for Public Assistance.

All counties within the State of Oklahoma are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling;

97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6958 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1884–DR; Docket ID FEMA–2010–0002]

California; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of California (FEMA–1884–DR), dated March 8, 2010, and related determinations.

DATES: *Effective Date:* March 8, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 8, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of California resulting from severe winter storms, flooding, and debris and mud flows during the period of January 17 to February 6, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of California.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Direct Federal assistance is authorized. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael H. Smith, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of California have been designated as adversely affected by this major disaster:

Calaveras, Imperial, Los Angeles, Riverside, San Bernardino, and Siskiyou Counties for Public Assistance. Direct Federal assistance is authorized.

All counties within the State of California are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6954 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1885–DR; Docket ID FEMA–2010–0002]

Kansas; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1885–DR), dated March 9, 2010, and related determinations.

DATES: *Effective Date:* March 9, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 9, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Kansas resulting from severe winter storms and snowstorm during the period of December 22, 2009, to January 8, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael R. Scott, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Kansas have been designated as adversely affected by this major disaster:

Allen, Anderson, Atchison, Bourbon, Brown, Butler, Cherokee, Cheyenne, Clay, Cowley, Crawford, Decatur, Doniphan, Elk, Franklin, Gove, Graham, Greenwood, Jackson, Jefferson, Jewell, Labette, Linn, Logan, Lyon, Marshall, Miami, Morris, Nemaha, Neosho, Norton, Osage, Phillips, Pottawatomie, Rawlins, Republic, Riley, Shawnee, Sheridan, Wabaunsee, Wallace, Washington, Wilson, Woodson, and Wyandotte Counties for Public Assistance.

Osage County for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6952 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1886–DR; Docket ID FEMA–2010–0002]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1886–DR), dated March 9, 2010, and related determinations.

DATES: *Effective Date:* March 9, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 9, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from a severe winter storm and snowstorm during the period of December 23–27, 2009, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. You are further authorized to provide emergency protective measures, including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period. You may extend the period of assistance, as warranted. This assistance excludes regular time costs for the sub-grantees' regular employees.

Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Campbell, Clay, Gregory, Jones, Lyman, Mellette, Perkins, Shannon, Todd, Tripp, Turner, and Yankton Counties and the portions of the Pine Ridge Reservation and Rosebud Reservation that lie within the designated counties for Public Assistance.

Campbell, Clay, Jones, Lyman, Perkins, Shannon, Todd, Turner, and Yankton Counties and the portions of the Pine Ridge Reservation and Rosebud Reservation that lie within the designated counties for emergency protective measures (Category B), including snow assistance, under the Public Assistance program for any continuous 48-hour period during or proximate to the incident period.

All counties and Tribes within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6951 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1887–DR; Docket ID FEMA–2010–0002]

South Dakota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of South Dakota (FEMA–1887–DR), dated March 10, 2010, and related determinations.

DATES: *Effective Date:* March 10, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 10, 2010, the President issued a

major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of South Dakota resulting from a severe winter storm during the period of January 20–26, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of South Dakota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Nancy M. Casper, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of South Dakota have been designated as adversely affected by this major disaster:

Aurora, Brule, Buffalo, Campbell, Corson, Day, Deuel, Dewey, Douglas, Edmunds, Faulk, Grant, Gregory, Hand, Harding, Hughes, Hutchinson, Hyde, Jerauld, McCook, McPherson, Meade, Perkins, Potter, Roberts, Sully, Turner, Walworth, and Ziebach Counties and those portions of the Cheyenne River Indian Reservation, Sisseton-Wahpeton Indian Reservation, and Standing Rock Indian Reservation that lie within these counties for Public Assistance.

All counties and Tribes within the State of South Dakota are eligible to apply for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6942 Filed 3–26–10; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–1888–DR; Docket ID FEMA–2010–0002]

Arizona; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Arizona (FEMA–1888–DR), dated March 18, 2010, and related determinations.

DATES: *Effective Date:* March 18, 2010.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Recovery Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 18, 2010, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the "Stafford Act"), as follows:

I have determined that the damage in certain areas of the State of Arizona resulting from severe winter storms and flooding during the period of January 18–22, 2010, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 et seq. (the "Stafford Act"). Therefore, I declare that such a major disaster exists in the State of Arizona.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance is supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Mark A. Neveau, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Arizona have been designated as adversely affected by this major disaster:

Apache, Coconino, Gila, Greenlee, La Paz, Mohave, Navajo, and Yavapai Counties and the Gila River Indian Community, Hopi Tribe, Navajo Nation, San Carlos Apache, Tohono O'odham Nation, and White Mountain Apache Tribe for Public Assistance.

All counties and Tribal Reservations within the State of Arizona are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

W. Craig Fugate,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2010–6938 Filed 3–26–10; 8:45 am]

BILLING CODE 9110–23–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Westlands Water District Drainage Repayment Contract

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Proposed Repayment Contract.

SUMMARY: The Bureau of Reclamation will be initiating negotiations with the Westlands Water District (District) of California to negotiate and execute a

long term repayment contract to provide for the terms and conditions for reimbursement of costs related to the construction of drainage facilities within the District. This action is being undertaken to satisfy the federal government obligation to provide drainage service to the District located within the San Luis Unit of the Central Valley Project in California.

FOR FURTHER INFORMATION CONTACT: Ms. Angela Slaughter, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825; telephone 916–978–5250 (TTY 800–735–2929); or e-mail: *aslaughter@mp.usbr.gov.*

Dated: March 16, 2010.

Richard J. Wodley,

Regional Resources Manager, Mid-Pacific Region, Bureau of Reclamation.

[FR Doc. 2010–6740 Filed 3–26–10; 8:45 am]

BILLING CODE 4310–MN–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2010–N028; 20124–11130000–C4]

Endangered and Threatened Wildlife and Plants; 5-Year Status Reviews of 14 Southwestern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of initiation of review; request for information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), are initiating 5-year status reviews of 14 southwestern species listed under the Endangered Species Act of 1973 (Act). We conduct these reviews to ensure that our classification of each species on the Lists of Endangered and Threatened Wildlife and Plants as threatened or endangered is accurate. A 5-year review assesses the best scientific and commercial data available at the time of the review. We are requesting the public send us any information that has become available since our original listing of each of these species. Based on review results, we will determine whether we should change the listing status of any of these species.

DATES: To ensure consideration in this status review, please send your written information by June 28, 2010. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information on these species to us at the addresses under "Public Comments" in the **SUPPLEMENTARY INFORMATION** section. We will make information we receive in response to this notice available for public inspection by appointment, during normal business hours, at the same addresses.

FOR FURTHER INFORMATION CONTACT: Contact the appropriate office named in "Public Comments" for species-specific information.

SUPPLEMENTARY INFORMATION:

Why Do We Conduct a 5-Year Review?

Section 4(c)(2)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b), to determine, on the basis of such a review, whether or not any species should be removed (delisted) from the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.12), or reclassified from endangered to threatened (downlisted), or from threatened to endangered (uplisted).

The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on the following 14 species since their original listings as either endangered (Alamosa springsnail, Hualapai Mexican vole, northern aplomado falcon, Rio Grande silvery minnow, Sneed pincushion cactus, star cactus, Texas prairie dawn-flower, Texas trailing phlox, white bladderpod, and whooping crane) or threatened (Gila trout, Lee pincushion cactus, loach minnow, and spikedace). If the present classification of any of these species is not consistent with the best scientific and commercial information available, we will recommend whether or not a change is warranted in the Federal classification of that species. Any change in Federal classification would require a separate rulemaking process.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our active review of the 14 species listed in Table 1.

What Do We Consider in Our Review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that has become available since the current listing determination or most recent status review of each species, such as:

A. Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics;

B. Habitat conditions, including but not limited to amount, distribution, and suitability;

C. Conservation measures that have been implemented to benefit the species;

D. Threat status and trends (see five factors under heading "How do we determine whether a species is endangered or threatened?"); and

E. Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

How Are These Species Currently Listed?

The List of Endangered and Threatened Wildlife and Plants (List) is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). Amendments to the List through final rules are published in the **Federal Register.** The List is also available on our Internet site at *http://www.fws.gov/endangered/wildlife.html.* In Table 1 below, we provide a summary of the current listing information for the species under active review.

TABLE 1—CURRENT LISTING STATUS OF SPECIES UNDER 5-YEAR STATUS REVIEW

Common name	Scientific name	Status	Where listed	Final listing rule publication date and citation
ANIMALS				
Alamosa springsnail	*Tryonia alamosae*	Endangered	U.S.A. (NM)	September 30, 1991 (56 FR 49646).
Gila trout	*Oncorhynchus gilae*	Threatened	U.S.A. (AZ, NM)	May 11, 2005 (70 FR 24750).

TABLE 1—CURRENT LISTING STATUS OF SPECIES UNDER 5-YEAR STATUS REVIEW—Continued

Common name	Scientific name	Status	Where listed	Final listing rule publication date and citation
Hualapai Mexican vole	*Microtus mexicanus hualpaiensis.*	Endangered	U.S.A. (AZ)	October 1, 1987 (52 FR 36776).
Loach minnow	*Tiaroga cobitis*	Threatened	U.S.A. (AZ, NM)	October 28, 1986 (51 FR 39468).
Northern aplomado falcon	*Falco femoralis septentrionalis.*	Endangered, Experimental, Non-essential.	U.S.A. (AZ, NM, TX)	February 25, 1986 (51 FR 6686).
Rio Grande silvery minnow	*Hybognathus amarus*	Endangered	U.S.A. (NM, TX)	July 20, 1994 (59 FR 36988).
Spikedace	*Meda fulgida*	Threatened	U.S.A. (AZ, NM)	July 1, 1986 (51 FR 23769).
Whooping crane	*Grus americana*	Endangered, Experimental Non-essential.	U.S.A. (TX + 27 states)	March 11, 1967 (32 FR 4001).
PLANTS				
Lee pincushion cactus	*Coryphantha sneedii leei*	Threatened	U.S.A. (NM)	October 25, 1979 (44 FR 61554).
Sneed pincushion cactus	*Coryphantha sneedii sneedii.*	Endangered	U.S.A. (NM, TX)	November 7, 1979 (44 FR 64741).
Star cactus	*Astrophytum asterias*	Endangered	U.S.A. (TX)	October 18, 1993 (58 FR 53804).
Texas prairie dawn-flower	*Hymenoxys texana*	Endangered	U.S.A. (TX)	March 13, 1986 (51 FR 8681).
Texas trailing phlox	*Phlox nivalis texensis*	Endangered	U.S.A. (TX)	September 30, 1991 (56 FR 49636).
White bladderpod	*Lesquerella pallida*	Endangered	U.S.A. (TX)	March 11, 1987 (52 FR 7424).

Definitions

In classifying, we use the following definitions:

A. *Species* includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature.

B. *Endangered species* (E) means any species that is in danger of extinction throughout all or a significant portion of its range.

C. *Threatened species* (T) means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

D. *Experimental population—non-essential* (XN) means any population of an endangered or threatened species (including any offspring arising solely therefrom) authorized for release (and the related transportation) outside the current range of the species, that is wholly separate geographically from nonexperimental populations of the same species, to promote the further conservation of that species.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors:

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.

Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of Our Review?

For each species under review, if we find new information that indicates a change in classification may be warranted, we may propose a new rule that could do one of the following:

(A) Reclassify the species from threatened to endangered (uplist);

(B) Reclassify the species from endangered to threatened (downlist); or

(C) Remove the species from the List (delist).

If we determine that a change in classification is not warranted, then the species remains on the List under its current status.

Public Comments

Submit information regarding whooping crane (*Grus americanus*) to the Refuge Manager, Aransas National Wildlife Refuge Complex, P.O. Box 100, Austwell, TX 77950. The office phone number is 361–286–3559.

Submit information regarding Hualupai Mexican vole (*Microtus mexicanus hualpaiensis*), loach minnow (*Tiaroga cobitis*), and spikedace (*Meda fulgida*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoeniz, AZ 85021. The office phone number is 602–242–0210.

Submit information regarding Texas prairie dawn-flower (*Hymenoxys texana*), Texas trailing phlox (*Phlox nivalis texensis*), and white bladderpod (*Lesquerella pallida*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, TX 77058. The office phone number is 281–286–8282.

Submit information regarding star cactus (*Astrophytum asterias*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, c/o TAMU–CC, 6300 Ocean Drive, Unit 5837, Corpus Christi, TX 78412. The office phone number is 361–994–9005.

Submit information regarding Alamosa springsnail (*Tryonia alamosae*), Gila trout (*Oncorhynchus*

gilae), Lee pincushion cactus (*Coryphantha sneedii leei*), northern aplomado falcon (*Falco femoralis septentrionalis*), Rio Grande silvery minnow (*Hybognathus amarus*), and Sneed pincushion cactus (*Coryphantha sneedii sneedii*) to the Field Supervisor, Attention 5-year Review, U.S. Fish and Wildlife Service, New Mexico Ecological Services Field Office, 2105 Osuna Road NE, Albuquerque, NM 87113. The office phone number is 505–346–2525.

Request for New Information

We request any new information concerning the status of the 14 species in Table 1. See "What Information Do We Consider in Our Review?" for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

This document is published under the authority of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: January 29, 2010.

Thomas L. Bauer,

Regional Director, Region 2.

[FR Doc. 2010–6868 Filed 3–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–LLMTC01000–L13200000–EL0000, MTM 97988]

Notice of Availability for the Signal Peak Energy, LLC, Federal Coal Lease Application; Environmental Assessment and Notice of Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability and Notice of Public Hearing.

SUMMARY: In accordance with Federal coal management regulations, the Signal Peak Energy Coal Lease by Application Environmental Assessment (EA) is available for public review and comment. The Bureau of Land Management (BLM) will hold a public hearing to receive comments on the EA and associated Finding of No Significant Impact (FONSI), as well as the Fair Market Value (FMV), and Maximum Economic Recovery (MER) of the coal resources for Signal Peak Energy's Federal Coal Lease Application MTM 97988.

DATES: The public hearing will be held in the BLM Montana State Office's main conference room on April 13, 2010, at 6:30 p.m., and will continue until all comments have been heard. Written comments must be received on or before 4 p.m., April 27, 2010.

ADDRESSES: The public hearing will be held at the BLM Montana State Office's main conference room, 5001 Southgate Drive, Billings, Montana. Written comments on the FMV and MER should be sent to the BLM, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669. Written comments or questions on the EA should be sent to James M. Sparks, Manager, Billings Field Office, 5001 Southgate Drive, Billings, Montana 59101–4669. Copies of the EA are available at the Billings Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Drake, Assistant Manager, Billings Field Office, 5001 Southgate Drive, Billings, Montana 59107–6800; 406–896–5349.

SUPPLEMENTARY INFORMATION: The land included in Coal Lease Application MTM 97988 contains an estimated 61.4 million tons of recoverable coal reserves. It is described as follows:

T.6N., R.27E., P.M.M
Sec. 4: Lot 1, S½NE¼, SE¼NW¼, S½
Sec. 8: NE¼, NE¼NW¼, S½NW¼, S½
Sec. 10: W½NE¼, SE¼NE¼, NW¼, S½
Sec. 14: SW¼NW¼, NW¼, S½
Sec. 22: W½, SE¼; 2,679.86 acres.

The EA addresses the cultural, socioeconomic, environmental, and cumulative impacts that would likely result from leasing these coal lands. Two alternatives are addressed in the EA:

Alternative 1: (Proposed Action) The tracts would be leased, as applied for;

Alternative 2: (No Action) The application would be rejected or denied. The Federal coal reserves would be bypassed.

Proprietary data marked as confidential may be submitted to the BLM in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and regulations governing the confidentiality of such information. A copy of the comments submitted by the public on FMV and MER, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the BLM Montana State Office, 5001 Southgate Drive, Billings, Montana 59101–4669, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday. Comments pertaining to the EA and FONSI will be available for public inspection at the Billings Field Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.) Monday through Friday.

Written comments on the FMV and MER should address, but not necessarily be limited to, the following:

1. The quality and quantity of the coal resources;

2. The mining method or methods which would achieve MER of the coal, including specifications of the seams to be mined, timing and rate of production, restriction to mining, and the inclusion of the tracts in an existing mining operation;

3. The FMV appraisal including, but not limited to, the evaluation of the tract as an incremental unit of an existing mine, selling price of the coal, mining and reclamation costs, net present value discount factors, depreciation and other tax accounting factors, value of the surface estate, and any comparable sales data on similar coal lands. The values given above may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, please be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

James M. Sparks,

Billings Field Office Manager.

[FR Doc. 2010–6723 Filed 3–26–10; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of Final Elk Management Plan and Environmental Impact Statement for Theodore Roosevelt National Park, North Dakota

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) announces the availability of a Final Elk Management Plan and Environmental Impact Statement (Plan/EIS) for Theodore Roosevelt National Park, North Dakota (Park).

DATES: The final Plan/EIS will remain available for public review for 30 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: The Plan/EIS is available via the Internet through the NPS Planning, Environment, and Public Comment Web site (*http://parkplanning.nps.gov/THRO*); click on the link to Elk Management Plan/EIS. You may also obtain a copy of the final Plan/EIS by sending a request to the Superintendent, Theodore Roosevelt National Park, P.O. Box 7, Medora, North Dakota 58645–0007.

SUPPLEMENTARY INFORMATION: The Park is proposing to manage its elk population to prevent impacts to other natural resources in the Park, which would likely occur as the herd size increases. The principal tool (translocation of live elk) the Park had been using to keep population numbers within management goals is no longer an option because of a an NPS policy issued in 2002 prohibiting translocation of elk from NPS units unless enough elk are tested to ensure that CWD is not present in the herd. The test for CWD is lethal to elk, and since 2002 the park has not tested enough elk to ensure the herd is free of CWD. Therefore, translocations for the purposes of population reduction have not occurred since 2000. This planning process was needed to examine alternatives to translocation. The purpose of this EIS is to develop and implement an elk management strategy compatible with the long term protection and preservation of park resources.

The NPS prepared a draft plan/EIS and made it available for public review for 90 days, from December 17, 2008 to March 19, 2009. Five public meetings on the draft Plan/EIS were held across the State of North Dakota from February 23, 2009, to February 28, 2009. The NPS preferred and environmentally preferable alternatives were announced in a separate newsletter and made available for public comment for 30 days, from August 10, 2009 to September 9, 2009. Comments on both the draft Plan/EIS and the preferred and environmentally preferable alternatives were considered from individuals, groups, and public agencies on a range of issues.

The preferred alternative utilizes a suite of options contained in Alternatives B (direct reduction with firearms), C (roundup and euthanasia), and D (roundup and translocation) to meet the purpose, need, and objectives of the Plan/EIS. This alternative was preferred because it will effectively reduce and maintain the herd size to target population goals while protecting park resources. This alternative will not overly burden other agencies or landowners, and does not require the Park to manage elk beyond its jurisdiction. It will provide for control by the NPS for selecting which animals will be removed, and also the time and place of removal. It may also provide robust samples for CWD screening, which is a critical issue for the Park, North Dakota Game and Fish Department, ranchers, and others.

The preferred alternative will primarily make use of skilled public volunteers to assist the Park with culling the elk herd through the use of firearms. The Park would not pay private contractors or outside individuals to shoot elk. The initial reduction phase would reduce the elk herd, now estimated at 1,000 elk, to approximately 200 elk within five years, by removing approximately 275 elk per year. Following the initial reduction phase, the Park would take an additional 20 to 24 elk per year for the remaining ten years of the Plan in order to maintain a consistent population level. For both the initial reduction phase and the maintenance phase, the number of elk taken outside the Park would be used to refine the number of elk that must be removed from the Park each year in order to meet the population goals. Following each year of the initial reduction phase, the NPS will evaluate the program in order to determine if its population goals are being met. If population goals are being achieved, the park will continue with the use of firearms. Should the park determine that its population goals are not being met following the first two years of the initial reduction phase, it would continue with direct reduction activities but would also have the ability to use a roundup or other capture methods and then euthanize and/or translocate elk in order to meet its population objectives. Should the park need to capture animals, whether elk are euthanized or translocated will depend on whether adequate sampling has occurred to meet chronic wasting disease (CWD) surveillance goals, whether CWD is detected in the herd and whether there are willing recipients that can meet all Federal and State requirements to transport and receive live elk.

FOR FURTHER INFORMATION CONTACT: Contact Superintendent Valerie Naylor, Theodore Roosevelt National Park, at the address above or by telephone at 701–623–4466.

Dated: February 2, 2010.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. 2010–6944 Filed 3–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2010–N059; 94240–1341–9BIS–N5]

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species (ANS) Task Force. The meeting is open to the public. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION** section.

DATES: The ANS Task Force will meet from 8 a.m. to 5 p.m. on Wednesday, May 5, and from 8 a.m. to 5 p.m. on Thursday, May 6, 2010.

ADDRESSES: The ANS Task Force meeting will take place at the Holiday Inn Hotel & Convention Center by the Bay, 88 Spring Street, Portland, ME (207–775–2311). You may inspect minutes of the meeting at the office of the Chief, Division of Fisheries and Aquatic Resource Conservation, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203, during regular business hours, Monday through Friday. You may also view the minutes on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php*.

FOR FURTHER INFORMATION CONTACT: Susan Mangin, Executive Secretary, ANS Task Force, at (703) 358–2466, or by e-mail at *Susan_Mangin@fws.gov*.

SUPPLEMENTARY INFORMATION: Under section 10(a)(2) of the Federal Advisory

Committee Act (5 U.S.C. App.), this notice announces meetings of the ANS Task Force. The ANS Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics that the ANS Task Force plans to cover during the meeting include:

- Impacts of invasive tunicates.
- Effectiveness of outreach campaigns.
- Roles of ANS Task Force Regional Panels.
- National ANS Hotline.

The agenda and other related meeting information are on the ANS Task Force Web site at: *http://anstaskforce.gov/meetings.php.*

Dated: March 19, 2010.

Bryan Arroyo,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries & Habitat Conservation.

[FR Doc. 2010–6879 Filed 3–26–10; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[DES 09–55]

Request for Small Reclamation Projects Act Loan To Construct Narrows Dam in Sanpete County, UT

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of Availability and Notice of Public Hearings for the Narrows Project Supplemental Draft Environmental Impact Statement (SDEIS).

SUMMARY: The Bureau of Reclamation (Reclamation), in cooperation with the U.S. Forest Service and the U.S. Army Corps of Engineers, has prepared and made available to the public a SDEIS pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4332.

DATES: A 63-day public review period commences with the publication of this notice. Written comments on the SDEIS are due by Tuesday, June 1, 2010.

Two public hearings have been scheduled for the SDEIS:

- Wednesday, April 28, 2010, 6 p.m. to 9 p.m., Manti, Utah.
- Thursday, April 29, 2010, 6 p.m. to 9 p.m., Price, Utah.

ADDRESSES: Send written comments on the SDEIS and requests for copies to Mr. Peter Crookston, PRO–774, Bureau of Reclamation, Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317; facsimile (801) 379–1159; *e-mail: narrowseis@usbr.gov.* The SDEIS is also available on Reclamation's Web site at *http://www.usbr.gov/uc/*(click on Environmental Documents and then click on the Narrows Supplemental Draft Environmental Impact Statement).

The public hearings will be held at:

- *Manti:* Manti City Hall, 50 South Main Street, 2nd Floor, Manti, Utah.
- *Price:* Price Civic Auditorium, 185 East Main Street, Price, Utah.

See **SUPPLEMENTARY INFORMATION** section for locations of where copies of the SDEIS are available for public review and inspection.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Crookston, telephone (801) 379–1152; facsimile (801) 379–1159; *e-mail: narrowseis@usbr.gov.* If special assistance is required regarding accessibility accommodations for attendance at either of the public hearings, please contact Peter Crookston no less than 5 working days prior to the applicable hearing(s).

SUPPLEMENTARY INFORMATION: The Narrows Project SDEIS describes the effects of Reclamation issuing to the Sanpete Water Conservancy District (SWCD) a loan pursuant to the authority of the Small Reclamation Projects Act, as amended (43 U.S.C. 422a–422k, 70 Stat. 1044), as well as issuing to the SWCD a right of use of Federal lands in accordance with Reclamation law. These Reclamation actions would facilitate the construction by SWCD of the proposed Narrows Dam and reservoir, a non-Federal project to be located on Gooseberry Creek in Sanpete County, Utah. The loan application and request for a right of use of Federal lands by SWCD to build the Narrows Project is intended to meet the purpose of developing an irrigation and municipal and industrial (M&I) supply source for water users in northern Sanpete County, Utah. The needs that would be met by the proposed Narrows Project include meeting present and future demand for municipal water, providing an adequate supply of late season irrigation water, and rehabilitating the Narrows Tunnel in Sanpete County to maintain and enhance its dependability and capability to deliver water to Sanpete County users.

The Narrows Project SDEIS updates information and analyses contained in the Narrows Project Draft Environmental Impact Statement (DES 98–10) published in March 1998 and discloses the direct, indirect, and cumulative effects of the proposed action and alternative actions for water development in northern Sanpete County, Utah. A Notice of Intent to prepare the Narrows Project SDEIS was published in the **Federal Register** on November 25, 2003 (68 FR 66123–66124). The SDEIS describes and analyzes the potential effects of three action alternatives and a no action alternative.

The No Action Alternative represents the conditions of the affected area if Reclamation does not approve the Small Reclamation Projects Act loan or issue a right of use of Federal lands to SWCD for the Narrows Project. It establishes the baseline for evaluating the environmental impacts of SWCD providing a supplemental water supply to northern Sanpete County, Utah. The No Action Alternative also establishes anticipated conditions in the affected areas without further development and assumes that irrigation operations would continue according to historic use.

The Proposed Action Alternative would provide northern Sanpete County an average annual supply of 4,281 acre-feet of supplemental irrigation water for 15,420 acres of presently irrigated farmland and 855 acre-feet of water for municipal use. The project would include construction of the 17,000 acre-foot Narrows Dam and reservoir on Gooseberry Creek, pipelines to deliver the water to existing water distribution systems, rehabilitation of the existing 3,100-foot Narrows Tunnel, and relocation of 2.9 miles of State Road (SR) 264. The dam would be 120-feet high with a crest length of 550 feet and a crest width of 30 feet. The project would also provide recreation opportunities.

The Mid-Sized Reservoir Alternative would be similar to the Proposed Action Alternative except that the reservoir capacity would be limited to 12,450 acre-feet. Of that amount, 9,950 acre-feet would be active capacity and 2,500 acre-feet would be inactive storage. The 110-foot high dam, with a crest length of 475 feet and crest width of 30 feet, would be in the same location as that for the Proposed Action Alternative. Other features of the project would be the same as those for the Proposed Action Alternative and would include the construction of pipelines, rehabilitation of the existing Narrows Tunnel, relocation of SR–264, and recreation opportunities.

The Small Reservoir Alternative would be similar to the Proposed Action Alternative except that the reservoir capacity would be limited to 7,900 acre-feet. Of that amount, 5,400 acre-feet would be active capacity and 2,500 acre-feet would be inactive storage. The 100-foot high dam, with a crest length of 425

feet and crest width of 30 feet, would be in the same location as that for the Proposed Action Alternative. Other features of the project would be the same as those for the Proposed Action Alternative and would include the construction of pipelines, rehabilitation of the existing Narrows Tunnel, relocation of SR–264, and recreation opportunities.

Copies of the SDEIS are available for public review and inspection at the following locations:

- Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 7418, Salt Lake City, Utah 84138–1102.
- Bureau of Reclamation, Provo Area Office, 302 East 1860 South, Provo, Utah 84606–7317.
- Utah State Clearinghouse, Attention: Tenielle Young, Governor's Office of Planning and Budget, Utah State Capitol Complex, Suite E210, P.O. Box 142210, Salt Lake City, Utah 84114–2210.

Libraries

- Manti Public Library, 50 South Main Street, Manti, Utah 84642.
- Price Public Library, 159 East Main Street, Price, Utah 84501.
- Salt Lake City Public Library, 210 East 400 South, Salt Lake City, Utah 84111.

Background

The SWCD has applied to Reclamation for a Small Reclamation Projects Act loan to help finance construction of a reservoir and related facilities. The SWCD has also requested from Reclamation a right of use of Federal lands as the site for dam construction. Reclamation's release of this SDEIS does not imply either approval or denial of the Small Reclamation Projects Act loan application or the request for authorization to use withdrawn lands. If Reclamation approves the Small Reclamation Projects Act loan and right of use of Federal lands in accordance with Reclamation law, and Congress appropriates the necessary funds, a supplemental water supply would be developed for presently irrigated lands and M&I water users in northern Sanpete County, Utah. Most of the reservoir basin would be located on adjacent, privately-owned land. A dam and reservoir would be constructed on Gooseberry Creek and 5,400 acre-feet of water would be diverted annually through an existing tunnel and a proposed pipeline to Cottonwood Creek; the existing tunnel would be rehabilitated. Pipelines would be constructed to deliver the water to existing water distribution systems. Recreation facilities would be developed and a 2,500-acre-foot minimum pool for fish habitat would be provided. The resulting water storage and delivery system would be a non-Federal project owned and operated by SWCD.

Mitigation measures would be implemented to offset any identified adverse impacts. Additional water conservation measures would be implemented independent of the proposed action. To be eligible to receive water from the Narrows Project, water users would be required to use, or agree to implement, conservation measures.

The Narrows Project, as defined in the SDEIS, is a non-Federal project that fulfills the intent of the larger Federal Gooseberry Project that was formulated more than 70 years ago, but never completed.

Purpose and Need for Action

The loan application and request for a right of use of Federal lands by SWCD to build the Narrows Project is intended to meet the purpose of developing an irrigation and M&I supply source for water users in northern Sanpete County, Utah. The needs that would be met by the proposed Narrows Project include meeting present and future demand for municipal water, providing an adequate supply of late season irrigation water, and rehabilitating the Narrows Tunnel in Sanpete County to maintain and enhance its dependability and capability to deliver water to Sanpete County users.

Proposed Federal Action

The proposed Federal action is Reclamation's required determination as to whether to recommend approval of SWCD's requested loan pursuant to the Small Reclamation Projects Act, as well as approval for a right of use of Federal lands to build and operate the proposed Narrows Project. Because issuance of a loan and authorization of a right of use of Federal lands would facilitate construction and operation of the Narrows Project, the SDEIS analyzes the effects of that proposed project and alternatives.

Hearing Process Information: The purpose of the public hearings is for Reclamation to receive oral and written comments from the public. Comments received at the public hearings will not be addressed during the public hearings. Oral comments presented at the hearings will be limited to five minutes. The hearing officer may allow any speaker to provide additional oral comments after all persons wishing to comment have been heard. All comments will be formally recorded. Speakers will sign up at the door as they arrive. Speakers not present when called will lose their privilege in the scheduled order and will be recalled at the end of the scheduled speakers. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the hearing/administrative record.

Written comments should be received by Reclamation's Provo Area Office using the contact information in the **ADDRESSES** section of this notice no later than Tuesday, June 1, 2010, for inclusion in the hearing/administrative record. Under the NEPA process, written and oral comments, received by the due date, are given the same consideration.

Public Disclosure

Before including your name, address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 11, 2010.

Brent Rhees,

Assistant Regional Director—UC Region.

[FR Doc. 2010–6592 Filed 3–26–10; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OMB Number 1121–0311]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: proposed collection; national inmate survey.

The Department of Justice (DOJ), Bureau of Justice Statistics, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 75, Number 14, page

3757 on January 22, 2010, allowing for a sixty day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until April 28, 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 Paige M. Harrison, Bureau of Justice Statistics, 810 Seventh Street, NW., Washington, DC 20531 (phone: 202–514–0809).

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of existing collection for which approval has expired.

(2) *Title of the Form/Collection:* National Inmate Survey.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms—National Inmate Survey (NIS), NIS consent (NIS–C), Juvenile consent (NIS–J), PAPI consent (NIS–P), Paper and Pencil Instrument (NIS–PAPI); The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice is the sponsor for this collection.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, Local, or Tribal Government. Other: Federal Government, Business or other for-profit, Not-for-profit institutions. The work under this clearance will be used to produce estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 105,500 respondents will spend approximately 35 minutes on average responding to the survey. This estimate has been revised from the 60-day notice.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 63,681 total burden hours associated with this collection. This estimate has been revised from the estimate published in the 60-day notice (57,592).

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 24, 2010.

Lynn Bryant,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2010–6973 Filed 3–26–10; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Proposal Review Panel for Physics, LIGO Site Visit in Louisiana (1208).

Date and Time:

Wednesday, April 14, 2010; 8:30 a.m.–6:30 p.m.

Thursday, April 15, 2010; 8:30 a.m.–6 p.m.

Friday, April 16, 2010; 9 a.m.–12 p.m.

Place: LIGO Observatory, Livingston, Louisiana.

Type of Meeting: Partially Closed.

Contact Person: Dr. Thomas Carruthers, Program Director for LIGO, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. *Telephone:* (703) 292–7373.

Purpose of Meeting: To provide an evaluation concerning the proposal submitted to the National Science Foundation.

Agenda

Wednesday, April 14, 2010

Closed: 8:30–9, Executive Session
Open 9:15–10:15, LIGO status, accomplishments, plans
Closed: 10:30–12, Management topics
Open: 1–3, Tour and facilities maintenance
Closed: 3:00–6:30, Cybersecurity, EPO, LSC status and Executive Session

Thursday, April 15, 2010

Closed: 8:30–12, Project overview and Project Management status
Closed: 1:30–2:45, Technical Progress, Development, R&D support
Closed: 5:30–6, Executive Session

Friday, April 16, 2010

Closed: 9–12, Executive Session, report writing, Close Out report

Reason for Closing: The proposal contains proprietary or confidential material including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) and (6) of the Government in the Sunshine Act.

Dated: March 23, 2010.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 2010–6803 Filed 3–26–10; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Information Collection Activity: Submission for OMB Review; Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing that it is submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This ICR describes a form that the NTSB proposes to use to obtain information from operators who need to report the occurrence of a resolution advisory (RA) in which an aircraft encountered a risk of collision with another aircraft. The proposed form is shorter than the form in which the NTSB currently receives reports of incidents under 49 CFR 830.5 (NTSB Form 6120.1). This Notice informs the public that they may submit

comments concerning the proposed use of this new form to the NTSB Desk Officer at the OMB.

DATES: Submit written comments regarding this proposed collection of information by May 28, 2010.

ADDRESSES: Respondents may submit written comments on the collection of information to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the National Transportation Safety Board, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Scott Dunham, NTSB Office of Aviation Safety, at (202) 314–6387.

SUPPLEMENTARY INFORMATION: In accordance with OMB regulations that require this Notice for proposed ICRs, the NTSB seeks to notify the public that it may submit comments on this proposed ICR to OMB. 5 CFR 1320.10(a).

The proposed form that the NTSB seeks to use will obtain information from operators who, had they not complied with an RA, would have encountered a substantial risk of collision with another aircraft, or who received an RA while operating in class A airspace. The NTSB's purpose in proposing to use a new form is to allow operators to avoid completing the NTSB's lengthier form in which the NTSB obtains a variety of information concerning an accident or incident (Form 6120.1), when completion of the lengthier form is unnecessary. The proposed new form will solicit the following information: (1) Confirmation that the incident to be reported falls under the scope of the rule; (2) contact information, such as the submitter's name, company (if any), e-mail address, and telephone number; (3) information about the flight and aircraft, such as the call sign, type of aircraft, location and time of the occurrence, and altitude at which the aircraft experienced the RA; (4) information about the ATC services being provided to the aircraft when the RA occurred, such as the ATC facility name and communications frequency in use; and (5) a brief description of the RA type and circumstances of the incident.

For the convenience of operators who submit reports of RAs, the NTSB plans to provide the form on the NTSB Web site. The NTSB's purpose in creating this Web-based form is to provide a convenient way in which submitters may comply with a portion of the NTSB's new regulations, which became effective on March 8, 2010, 75 FR 922–01 (Jan. 7, 2010). In particular, 49 CFR 830.5(a)(10) now requires reports of the following: "Airborne Collision and Avoidance System (ACAS) resolution advisories issued either: When an aircraft is being operated on an instrument flight rules flight plan and compliance with the advisory is necessary to avert a substantial risk of collision between two or more aircraft; or to an aircraft operating in class A airspace." The NTSB notes that this new regulation does not require reports of RAs unless compliance with the RA is necessary to avoid a substantial risk of collision between two or more aircraft, or unless an aircraft receives an RA while operating in class A airspace. Therefore, before being allowed to continue, the submitter will be asked to confirm that the proposed report involves an incident that falls within the scope of the rule. Once a submitter completes the form, the NTSB may contact the submitter and may consider asking the submitter to complete NTSB Form 6120.1, if the NTSB determines that it needs additional information.

The NTSB also notes that respondents' completion of the form is optional, because respondents may call the NTSB Communications Center or an NTSB field office if they prefer to notify the NTSB via telephone. The form will only be available on the NTSB Web site, and the NTSB has carefully reviewed the form to ensure that it has used plain, coherent, and unambiguous terminology in its requests for information. The form is not duplicative of another agency's collection of information. The NTSB believes this proposed form, given its brevity, will impose a minimal burden on respondents: the NTSB estimates that respondents will spend approximately 10 minutes in completing the form. The NTSB estimates that approximately 20 respondents per year will complete the form.

Dated: March 23, 2010.

Candi Bing,

Federal Register Liaison Officer.

[FR Doc. 2010–6818 Filed 3–26–10; 8:45 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2010–0113]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* NRC Form 314, Certificate of Disposition of Materials.

2. *Current OMB approval number:* 3150–0028.

3. *How often the collection is required:* This form is submitted once, when a licensee terminates its license.

4. *Who is required or asked to report:* Persons holding a NRC license for the possession and use of radioactive byproduct, source, or special nuclear material that are ceasing licensed activities and terminating the license.

5. *The number of annual respondents:* 136.

6. *The number of hours needed annually to complete the requirement or request:* 68.

7. *Abstract:* The NRC Form 314 furnishes information to the NRC regarding transfer or other disposition of radioactive material by licensees who wish to terminate their licenses. The information is used by the NRC as part of the basis for its determination that the facility has been cleared of radioactive material before the facility is released for unrestricted use.

Submit, by May 28, 2010, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, Maryland 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC

home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2010–0113. You may submit your comments by any of the following methods. *Electronic comments:* Go to *http://www.regulations.gov* and search for Docket No. NRC–2010–0113. Mail comments to NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Tremaine Donnell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6258, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV.*

Dated at Rockville, Maryland, this 17th day of March 2010.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2010–6883 Filed 3–26–10; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–387 and 50–388; NRC–2010–0109]

PPL Susquehanna, LLC; Susquehanna Steam Electric Station, Units 1 and 2; Exemption

1.0 Background

PPL Susquehanna, LLC (PPL or the licensee) is the holder of Renewed Facility Operating License Nos. NPF–14 and NPF–22, which authorize operation of the Susquehanna Steam Electric Station (SSES), Units 1 and 2. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two boiling-water reactors located in Luzerne County, Commonwealth of Pennsylvania.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 73, "PHYSICAL PROTECTION OF PLANTS AND MATERIALS," section 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," published March 27, 2009, effective May 26, 2009, with a full implementation date of March 31, 2010, requires licensees to protect, with high assurance, against radiological sabotage by designing and implementing comprehensive site security programs. The amendments to 10 CFR 73.55 published on March 27, 2009, establish and update generically applicable security requirements similar to those previously imposed by Commission orders issued after the terrorist attacks of September 11, 2001, and implemented by licensees. In addition, the amendments to 10 CFR 73.55 include additional requirements to further enhance site security based upon insights gained from implementation of the post-September 11, 2001, security orders. It is from three of these new requirements that PPL now seeks an exemption from the March 31, 2010, implementation date. All other physical security requirements established by this recent rulemaking have already been or will be implemented by the licensee by March 31, 2010.

By letter dated December 3, 2009, as supplemented by letters dated January 8 and 29, 2010, the licensee requested an exemption in accordance with 10 CFR 73.5, "Specific exemptions." The portions of the licensee's letters dated December 3, 2009, as supplemented by letters dated January 8 and 29, 2010, contain sensitive security information and accordingly are withheld from public disclosure in accordance with 10 CFR 2.390. The licensee has requested an exemption from the March 31, 2010, compliance date, stating that it must complete a number of significant modifications to the current site security configuration before all requirements can be met. Specifically, the request is to extend the compliance date for one specific requirement to October 29, 2010, and until July 31, 2011, for two other requirements from the current March 31, 2010, deadline. Being granted this exemption for the three items would allow the licensee to complete the modifications designed to update aging equipment and incorporate state-of-the-art technology to meet or exceed the noted regulatory requirements.

3.0 Discussion of Part 73 Schedule Exemptions From the March 31, 2010, Full Implementation Date

Pursuant to 10 CFR 73.55(a)(1), "By March 31, 2010, each nuclear power reactor licensee, licensed under 10 CFR part 50, shall implement the requirements of this section through its Commission-approved Physical Security Plan, Training and Qualification Plan, Safeguards Contingency Plan, and Cyber Security Plan referred to collectively hereafter as 'security plans.'" Pursuant to 10 CFR 73.5, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 73 when the exemptions are authorized by law, and will not endanger life or property or the common defense and security, and are otherwise in the public interest.

This NRC approval of the exemption as noted above, would allow an extension of implementation date in the new rule from March 31, 2010, to October 29, 2010, for one specific requirement and until July 31, 2011, for two other requirements. As stated above, 10 CFR 73.5 allows the NRC to grant exemptions from the requirements of 10 CFR part 73. The NRC staff has determined that granting of the licensee's proposed exemption would not result in a violation of the Atomic Energy Act of 1954, as amended or the Commission's regulations. Therefore, the NRC approval of the licensee's exemption request is authorized by law.

In the draft final power reactor security rule provided to the Commission, the NRC staff proposed that the requirements of the new regulation be met within 180 days. The Commission directed a change from 180 days to approximately 1 year for licensees to fully implement the new requirements. This change was incorporated into the final rule. From this, it is clear that the Commission wanted to provide a reasonable timeframe for licensees to achieve full compliance.

As noted in the final rule, the Commission also anticipated that licensees would have to conduct site-specific analyses to determine what changes were necessary to implement the rule's requirements, and that changes could be accomplished through a variety of licensing mechanisms, including exemptions. Since issuance of the final rule, the Commission has rejected a generic industry request to extend the rule's compliance date for all operating nuclear power plants, but noted that the Commission's regulations provide mechanisms for individual

licensees, with good cause, to apply for relief from the compliance date (Reference: letter dated June 4, 2009, from R.W. Borchardt, NRC, to M.S. Fertel, Nuclear Energy Institute, Agencywide Documents Access and Management System (ADAMS) Accession Number ML091410309). The licensee's request for an exemption is, therefore, consistent with the approach set forth by the Commission and discussed in the letter dated June 4, 2009.

SSES Units 1 and 2 Schedule Exemption Request

The licensee provided detailed information in its submissions dated December 3, 2009, as supplemented by letters dated January 8 and 29, 2010, requesting an exemption. In its submissions, PPL stated that implementation of specific parts of the new requirements will require more time to implement since they involve significant physical modifications requiring: (1) Specific parts that are proving to be long lead time items, (2) specialized industry expertise whose availability is being challenged by the significant demand for a limited resource, or (3) a major interface with the plant for installation that must be carefully planned and implemented to avoid impact to the plant protective strategy. The licensee provided a timeline for achieving full compliance with the new regulation. The licensee's submissions dated December 3, 2009, as supplemented by letters dated January 8 and 29, 2010, contain sensitive security information regarding (1) The site security plan, (2) details of the specific requirements of the regulation for which the site cannot be in compliance by the March 31, 2010, deadline and justification for the same, (3) the required changes to the site's security configuration, and (4) a timeline with critical path activities that will bring the licensee into full compliance by July 31, 2011, for all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009 (by October 29, 2010, for one specific requirement, by July 31, 2011, for two other requirements, and by March 31, 2010, for all other requirements). The timeline provides dates indicating when (1) construction will begin on various phases of the project (*e.g.,* new roads, buildings, and fences), (2) outages are scheduled for each unit, and (3) critical equipment will be ordered, installed, tested and become operational.

Notwithstanding the schedule exemptions for these limited requirements, the licensee stated that it will continue to be in compliance with all other applicable physical security requirements as described in 10 CFR 73.55 and reflected in its current NRC-approved physical security program. By July 31, 2011, SSES, Units 1 and 2 will be in full compliance with all the regulatory requirements of 10 CFR 73.55, as issued on March 27, 2009.

4.0 Conclusion for Part 73 Schedule Exemption Request

The staff has reviewed the licensee's submittals and concludes that the licensee has provided adequate justification for its request for an extension of the compliance date to July 31, 2011, with regard to three specified requirements of 10 CFR 73.55.

Accordingly, the Commission has determined that pursuant to 10 CFR 73.5, "Specific exemptions," an exemption from the March 31, 2010, compliance date is authorized by law and will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption.

The NRC staff has determined that the long-term benefits that will be realized when the modifications described in PPL's letter dated December 3, 2009, as supplemented by letters dated January 8 and 29, 2010, are complete, justifies exceeding the full compliance date in the case of this particular licensee. The security measures PPL needs additional time to implement are new requirements imposed by March 27, 2009, amendments to 10 CFR 73.55, and are in addition to those required by the security orders issued in response to the events of September 11, 2001. Therefore, the NRC concludes that the licensee's actions are in the best interest of protecting the public health and safety through the security changes that will result from granting this exemption.

As per the licensee's request and the NRC's regulatory authority to grant an exemption from the March 31, 2010, implementation deadline for the three items specified in its letter dated December 3, 2009, as supplemented by letter dated January 8 and January 29, 2010, the licensee is required to be in full compliance July 31, 2011 (by October 29, 2010, for one specific requirement, by July 31, 2011, for two other requirements, and by March 31, 2010, for all other requirements.) In achieving compliance, the licensee is reminded that it is responsible for determining the appropriate licensing mechanism (*i.e.,* 10 CFR 50.54(p) or 10 CFR 50.90) for incorporation of all necessary changes to its security plans.

Pursuant to 10 CFR 51.32, "Finding of no significant impact," the Commission has previously determined that the granting of this exemption will not have a significant effect on the quality of the human environment 75 FR 13322; dated March 19, 2010.

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 22nd day of March 2010.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2010–6885 Filed 3–26–10; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

National Council on Federal Labor-Management Relations Meeting

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting.

SUMMARY: The National Council on Federal Labor-Management Relations will hold its second and third meetings on April 7, 2010 and May 5, 2010 at the time and location shown below. The Council is an advisory body composed of representatives of Federal employee organizations, Federal management organizations, and senior government officials. The Council was established by Executive Order 13522, entitled, "Creating Labor-Management Forums to Improve Delivery of Government Services," which was signed by the President on December 9, 2009. Along with its other responsibilities, the Council assists in the implementation of Labor Management Forums throughout the government and makes recommendations to the President on innovative ways to improve delivery of services and products to the public while cutting costs and advancing employee interests. The Council is co-chaired by the Director of the Office of Personnel Management and the Deputy Director for Management of the Office of Management and Budget.

Please note that we are providing a slightly shortened notice period for the April 7 meeting as permitted under 41 CFR 102–3.150 in "exceptional circumstances." Action on this notice was delayed due to the press of increased workloads at OPM this week relating to the recent passage of the health care bill. However, the meeting date, time, location and purpose were announced at the February 26, 2010 public meeting of the Council. Also, notice of the meeting has been posted

on the Council website at LMRcouncil.gov since March 8, 2010. Deadlines imposed by the executive order are pending as agencies were required to submit implementation plans no later than March 9, and the Council must act on those plans within 30 days of receipt. OPM believes that a timely meeting is necessary for the Council to meet its requirements under the order and to consider public comments on these agency plans. A further postponement of the meeting would hinder agencies from meeting their responsibilities under the order to implement labor-management forums throughout the Federal Government.

At the April 7 meeting, the Council will review agency implementation plans and make recommendations on their certification. At the May 5 meeting, the Council will work on recommendations to the President concerning 5 U.S.C. 7106 (b)(1) pilot projects The meetings are open to the public. Please contact the Office of Personnel Management at the address shown below if you wish to present material to the Council at the meeting. The manner and time prescribed for presentations may be limited, depending upon the number of parties that express interest in presenting information.

DATES: April 7, 2010, at 10 a.m. and May 5, 2010, at 10 a.m.

Location: U.S. Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Room 1416, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Wachter, Acting Deputy Associate Director for Partnership and Labor Relations, Office of Personnel Management, 1900 E Street, NW., Room 7H28–E, Washington, DC 20415. Phone (202) 606–2930; FAX (202) 606–2613; or e-mail at *PLR@opm.gov*.

For the National Council.

John Berry,

Director.

[FR Doc. 2010–6941 Filed 3–26–10; 8:45 am]

BILLING CODE 6325–39–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of Information Collection

Application and Claim for Sickness Insurance Benefits; OMB 3220–0039

Under section 2 of the Railroad Unemployment Insurance Act (RUIA), sickness benefits are payable to qualified railroad employees who are unable to work because of illness or injury. In addition, sickness benefits are payable to qualified female employees if they are unable to work, or if working would be injurious, because of pregnancy, miscarriage or childbirth. Under section 1(k) of the RUIA, a statement of sickness with respect to days of sickness of an employee is to be filed with the RRB within a 10-day period from the first day claimed as a day of sickness. The RRB's authority for requesting supplemental medical information is section 12(i) and 12(n) of the RUIA. The procedures for claiming sickness benefits and for the RRB to obtain supplemental medical information needed to determine a claimant's eligibility for such benefits are prescribed in 20 CFR part 335.

The forms currently used by the RRB to obtain information needed to determine eligibility for and the amount of sickness benefits due a claimant follows: Form SI–1a, Application for Sickness Benefits; Form SI–1b, Statement of Sickness; Form SI–3, Claim for Sickness Benefits; Form SI–7, Supplemental Doctor's Statement; Form SI–8, Verification of Medical Information; Form ID–7h, Non-Entitlement to Sickness Benefits and Information on Unemployment Benefits; Form ID–11a, Requesting Reason for Late Filing of Sickness Benefit and ID–11b, Notice of Insufficient Medical and Late Filing. Completion is required to obtain or retain benefits. One response is requested of each respondent.

The RRB proposes the addition an equivalent Internet version of Form SI–3, Claim for Sickness Benefits to the information collection. The Internet equivalent Form SI–3 will essentially mirror the manual RRB Form SI–3 currently in use, but will also provide the claimant the ability to change their direct deposit information in addition to the ability to complete and file the claim via the Internet. No other changes are proposed.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time(min)	Burden (hrs)
SI–1a	17,000	10	2,833
SI–1b (Doctor)	17,000	8	2,267
SI–3 (manual)	118,150	5	9,846
SI–3 (Internet)	20,850	5	1,738
SI–7	22,600	8	3,013
SI–8	50	5	4
ID–7H	50	5	4
ID–11A	800	4	53
ID–11B	1,000	4	67
Total	197,500	.....	19,825

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV*. Comments regarding the information collection

should be addressed to Patricia A. Henaghan, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or by e-mail to *Patricia.Henaghan@RRB.gov*. Written comments should be received within 60 days of this notice.

Charles Mierzwa,

RRB Clearance Officer.

[FR Doc. 2010–6906 Filed 3–26–10; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29178; 812–13058–06]

RMR Real Estate Income Fund, et al.; Notice of Application

March 23, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 19(b) of the Act and rule 19b–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year, and as frequently as distributions are specified by or in accordance with the terms of any outstanding preferred stock that such investment companies may issue.

APPLICANTS: RMR Real Estate Income Fund and RMR Advisors, Inc.

FILING DATES: December 31, 2003, September 23, 2008, February 13, 2009, and September 30, 2009.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 19, 2010, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; applicants, 400 Centre Street, Newton, MA 02458.

FOR FURTHER INFORMATION CONTACT: Wendy Friedlander, Senior Counsel, at (202) 551–6837, or James M. Curtis, Branch Chief, at (202) 551–6712 (Division of Investment Management, Office of Chief Counsel).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm*, or by calling (202) 551–8090.

Applicants' Representations

1. RMR Real Estate Income Fund ("RIF") is a closed-end management investment company registered under the Act and organized as a Delaware statutory trust.[1] RIF's primary investment objective is to earn and pay to its common shareholders a high level of income by investing in real estate companies, including real estate investment trusts. RIF's secondary investment objective is capital appreciation. RIF has common stock that is listed and traded on the NYSE Amex and preferred stock that does not trade on any exchange. Applicants believe that the investors in the common stock of RIF may prefer an investment vehicle that provides regular periodic distributions and a steady cash flow.

2. RMR Advisors, Inc. (the "Adviser") is registered under the Investment Advisers Act of 1940 and has provided investment advisory services to RIF since its inception. The Adviser is wholly-owned by Barry M. Portnoy and Adam D. Portnoy.

3. Applicants represent that RIF's Board of Trustees (the "Board"), including a majority of the members of the Board who are not "interested persons" of RIF as defined in section 2(a)(19) of the Act (the "Independent Trustees"), approved RIF's adoption of a distribution plan with respect to RIF's common stock ("Plan"). The Plan would permit RIF to distribute as often as monthly to its common stockholders a fixed percentage of the market price per common share, a fixed percentage of net asset value ("NAV") per common share, or a fixed amount per common share, any of which may be adjusted from time to time.

4. Applicants represent that, in adopting the Plan, RIF's Board, including a majority of RIF's Independent Trustees: (a) Requested and considered, and the Adviser provided, information regarding the purpose and terms of the Plan; the reasonably foreseeable material effect of the Plan on RIF's long-term total return (in relation to market price and NAV per common share); and what conflicts of interest the Adviser and the affiliated persons of the Adviser and RIF might have with respect to the adoption or implementation of the Plan; (b) approved RIF's adoption of compliance policies and procedures in accordance with rule 38a–1 under the Act that (i) are reasonably designed to ensure that all notices required to be sent to RIF's shareholders pursuant to section 19(b) of the Act, rule 19b–1 under the Act and the conditions set forth below ("Notices") include the disclosure required by rule 19b–1 and the condition II. A. below, and that all other written communications by RIF or its agents include the disclosure required by condition III .A. below; and (ii) require RIF to keep records that demonstrate its compliance with all of the conditions of the requested Order and that are necessary to form the basis for, or demonstrate the calculation of, the amounts disclosed in the Notice. Applicants further state that after considering such information the Board, including a majority of the Independent Trustees, approved the Plan and determined that the Plan is consistent with RIF's investment objectives and is in the best interests of RIF's common stockholders. Applicants represent that the Board has recorded the basis for its approval of the Plan, including its considerations of the factors listed in this paragraph, in its minutes, which will be preserved for a period of not less that six years from the date of the meeting, the first two years in an easily accessible place, or such longer period as may otherwise be required by law.

Applicants' Legal Analysis

1. Section 19(b) generally makes it unlawful for any registered investment company to make long-term capital gains distributions more than once each year. Rule 19b–1 limits the number of capital gains dividends, as defined in section 852(b)(3)(C) of the Code

[1] Applicants request that any order issued granting the relief requested in the application also apply to any closed-end investment company that in the future: (a) Is advised by the Adviser (including any successor in interest) or by any entity controlling, controlled by, or under common control (within the meaning of section 2(a)(9) of the Act) with the Adviser; and (b) complies with the terms and conditions of the requested order. A successor in interest is limited to entities that result from a reorganization into another jurisdiction or a change in the type of business organization.

("distributions"), that a fund may make with respect to any one taxable year to one, plus a supplemental "clean up" distribution made pursuant to section 855 of the Code not exceeding 10% of the total amount distributed for the year, plus one additional capital gain dividend made in whole or in part to avoid the excise tax under section 4982 of the Code.

2. Section 6(c) provides that the Commission may, by order upon application, conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

3. Applicants state that one of the concerns underlying section 19(b) and rule 19b–1 is that stockholders might be unable to differentiate between regular distributions of capital gains and distributions of investment income. Applicants state, however, that rule 19a–1 effectively addresses this concern by requiring that a separate statement showing the sources of a distribution (*e.g.,* estimated net income, net short-term capital gains, net long-term capital gains and/or return of capital) accompany any distributions (or the confirmation of the reinvestment of distributions) estimated to be sourced in part from capital gains or capital. Applicants state that the same information also is included annual reports to stockholders and on its IRS Form 1099–DIV, which is sent to each common and preferred stockholder who received distributions during the year.

4. Applicants further state that RIF will make the additional disclosures required by the conditions set forth below, and has adopted compliance policies and procedures in accordance with rule 38a–1 to ensure that all required Notices and disclosures are sent to its stockholders. Applicants argue that by providing the information required by section 19(a) and rule 19a–1, and by complying with the procedures adopted under the Plan and the conditions listed below, RIF will ensure that its stockholders are provided sufficient information to understand that their periodic distributions are not tied to RIF's net investment income (which for this purpose is RIF's taxable income other than from capital gains) and realized capital gains to date, and may not represent yield or investment return. Applicants also state that compliance with the Plan's compliance procedures and condition III set forth below will ensure that prospective stockholders and third parties are provided with the same information. Accordingly, applicants assert that continuing to subject RIF to section 19(b) and rule 19b–1 would afford its stockholders no extra protection.

5. Applicants note that section 19(b) and rule 19b–1 also were intended to prevent certain improper sales practices including, in particular, the practice of urging an investor to purchase stock of a fund on the basis of an upcoming capital gains dividend ("selling the dividend"), where the dividend would result in an immediate corresponding reduction in NAV and would be in effect a taxable return of the investor's capital. Applicants assert that the "selling the dividend" concern should not apply to closed-end investment companies which do not continuously distribute shares. According to applicants, if the underlying concern extends to secondary market purchases of stock of closed-end funds that are subject to a large upcoming capital gains distribution, adoption of a Plan actually helps minimize the concern by avoiding, through periodic distributions, any buildup of large end-of-the-year distributions.

6. Applicants also note that common stock of closed-end funds that invest primarily in equity securities often trades in the marketplace at a discount to the fund's NAV. Applicants believe that this discount may be reduced for closed-end funds that pay relatively frequent dividends on their common stock at a consistent rate, whether or not those dividends contain an element of long-term capital gain.

7. Applicants assert that the application of rule 19b–1 to a Plan actually could have an undesirable influence on portfolio management decisions. Applicants state that, in the absence of an exemption from rule 19b–1, the implementation of a Plan imposes pressure on fund management to realize short-term gains rather than long-term gains to ensure that capital gains distributions fit within the framework of rule 19b–1, notwithstanding that purely investment considerations might favor realization of long-term gains at different times or in different amounts.

8. In addition, Applicants assert that rule 19b–1 may cause fixed regular periodic distributions under a Plan to be funded with returns of capital [2] (to the extent net investment income and realized short-term capital gains are insufficient to fund the distribution), even though realized net long-term capital gains otherwise could be available. To distribute all of a fund's long-term capital gains within the limits in rule 19b–1, a fund may be required to make total distributions in excess of the annual amount called for by its Plan, or to retain and pay taxes on the excess amount. Applicants thus assert that the requested order would minimize these effects of rule 19b–1 by enabling the Funds to realize long-term capital gains as often as investment considerations dictate without fear of violating rule 19b–1.

9. Applicants state that *Revenue Ruling 89–81* under the Code requires that a fund that has both common stock and preferred stock outstanding designate the types of income, *e.g.,* investment income and capital gains, in the same proportion as the total distributions distributed to each class for the tax year. To satisfy the proportionate designation requirements of *Revenue Ruling 89–81,* whenever a fund has realized a long-term capital gain with respect to a given tax year, the fund must designate the required proportionate share of such capital gain to be included in common and preferred stock dividends. Applicants state that although rule 19b–1 allows a fund some flexibility with respect to the frequency of capital gains distributions, a fund might use all of the exceptions available under the rule for a tax year and still need to distribute additional capital gains allocated to the preferred stock to comply with *Revenue Ruling 89–81.*

10. Applicants assert that the potential abuses addressed by section 19(b) and rule 19b–1 do not arise with respect to preferred stock issued by a closed-end fund. Applicants assert that such distributions are fixed or determined in periodic auctions by reference to short-term interest rates rather than by reference to performance of the issuer and *Revenue Ruling 89–81* determines the proportion of such distributions that are comprised of the long-term capital gains.

11. Applicants also submit that the "selling the dividend" concern is not applicable to preferred stock, which entitles a holder to no more than a periodic dividend at a fixed rate or the rate determined by the market, and, like a debt security, is priced based upon its liquidation value, credit quality, and frequency of payment. Applicants state that investors buy preferred shares for the purpose of receiving payments at the frequency bargained for, and do not expect the liquidation value of their shares to change.

[2] Returns of capital as used in the application means return of capital for financial accounting purposes and not for tax accounting purposes.

12. Applicants request an order under section 6(c) granting an exemption from the provisions of section 19(b) and rule 19b–1 to permit each Fund's common stock to distribute periodic capital gains dividends (as defined in section 852(b)(3)(C) of the Code) as often as monthly in any one taxable year in respect of its common stock and as often as specified by or determined in accordance with the terms thereof in respect of its preferred stock.[3]

Applicants' Conditions

Applicants agree that, with respect to each fund seeking to rely on the order, the order will be subject to the following conditions:

I. Compliance Review and Reporting

The fund's chief compliance officer will: (a) Report to the fund's Board, no less frequently than once every three months or at the next regularly scheduled quarterly board meeting, whether (i) the fund and the Adviser have complied with the conditions to the requested order, and (ii) a Material Compliance Matter, as defined in rule 38a–1(e)(2), has occurred with respect to compliance with such conditions; and (b) review the adequacy of the policies and procedures adopted by the fund no less frequently than annually.

II. Disclosures To Fund Stockholders

A. Each Notice to the holders of a fund's common stock, in addition to the information required by section 19(a) and rule 19a-1:

1. Will provide, in a tabular or graphical format:

(a) The amount of the distribution, on a per common share basis, together with the amounts of such distribution amount, on a per common share basis and as a percentage of such distribution amount, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(b) The fiscal year-to-date cumulative amount of distributions, on a per common share basis, together with the amounts of such cumulative amount, on a per common share basis and as a percentage of such cumulative amount of distributions, from estimated: (A) Net investment income; (B) net realized short-term capital gains; (C) net realized long-term capital gains; and (D) return of capital or other capital source;

(c) The average annual total return in relation to the change in NAV for the 5-year period (or, if the fund's history of operations is less than five years, the time period commencing immediately following the fund's first public offering) ending on the last day of the month prior to the most recent distribution record date compared to the current fiscal period's annualized distribution rate expressed as a percentage of NAV as of the last day of the month prior to the most recent distribution declaration date; and

(d) The cumulative total return in relation to the change in NAV per common share from the last completed fiscal year to the last day of the month prior to the most recent distribution record date compared to the fiscal year-to-date cumulative distribution rate expressed as a percentage of NAV per common share as of the last day of the month prior to the most recent distribution record date.

Such disclosure shall be made in a type size at least as large and as prominent as the estimate of the sources of the current distribution; and

2. Will include the following disclosure:

(a) "You should not draw any conclusions about the fund's investment performance from the amount of this distribution or from the terms of the fund's Plan";

(b) "The fund estimates that it has distributed more than its income and net realized capital gains; therefore, a portion of your distribution may be a return of capital. A return of capital may occur, for example, when some or all of the money that you invested in the fund is paid back to you. A return of capital distribution does not necessarily reflect the fund's investment performance and should not be confused with 'yield' or 'income'";[4] and

(c) "The amounts and sources of distributions reported in this Notice are only estimates and are not being provided for tax reporting purposes. The actual amounts and sources of the amounts for tax reporting purposes will depend upon the fund's investment experience during the remainder of its fiscal year and may be subject to changes based on tax regulations. The fund will send you a Form 1099–DIV for the calendar year that will tell you how to report these distributions for federal income tax purposes."

Such disclosure shall be made in a type size at least as large as and as prominent as any other information in the Notice and placed on the same page in close proximity to the amount and the sources of the distribution.

B. On the inside front cover of each report to stockholders under rule 30e–1 under the Act, the fund will:

1. Describe the terms of the Plan (including the fixed amount or fixed percentage of the distributions and the frequency of the distributions);

2. Include the disclosure required by condition II.A.2.a above;

3. State, if applicable, that the Plan provides that the Board may amend or terminate the Plan at any time without prior notice to fund stockholders; and

4. Describe any reasonably foreseeable circumstances that might cause the fund to terminate the Plan and any reasonably foreseeable consequences of such termination.

C. Each report provided to stockholders under rule 30e–1 and each prospectus filed with the Commission on Form N–2 under the Act, will provide the fund's total return in relation to changes in NAV in the financial highlights table and in any discussion about the fund's total return.

III. Disclosure to Stockholders, Prospective Stockholders and Third Parties

A. Each fund will include the information contained in the relevant Notice, including the disclosure required by condition II.A.2 above, in any written communication (other than a Form 1099) about the Plan or distributions under the Plan by the fund, or agents that the fund has authorized to make such communication on the fund's behalf, to any fund stockholder, prospective stockholder or third-party information provider;

B. Each fund will issue, contemporaneously with the issuance of any Notice, a press release containing the information in the Notice and will file with the Commission the information contained in such Notice, including the disclosure required by condition II.A.2 above, as an exhibit to its next filed Form N–CSR; and

C. Each fund will post prominently a statement on its (or its adviser's) Web site containing the information in each Notice, including the disclosure required by condition II.A.2 above, and will maintain such information on such Web site for at least 24 months.

IV. Delivery of 19(a) Notices to Beneficial Owners

If a broker, dealer, bank or other person ("financial intermediary") holds common stock issued by a fund in

[3] Applicants state that a future fund that relies on the requested order will satisfy each of the representations in the application except that such representations will be made in respect of actions by the board of directors of such future fund and will be made at a future time.

[4] This disclosure will be included only if the current distribution or the fiscal year-to-date cumulative distributions are estimated to include a return of capital.

nominee name, or otherwise, on behalf of a beneficial owner, the fund: (a) Will request that the financial intermediary, or its agent, forward the Notice to all beneficial owners of the fund's stock held through such financial intermediary; (b) will provide, in a timely manner, to the financial intermediary, or its agent, enough copies of the Notice assembled in the form and at the place that the financial intermediary, or its agent, reasonably requests to facilitate the financial intermediary's sending of the Notice to each beneficial owner of the fund's common stock; and (c) upon the request of any financial intermediary, or its agent, that receives copies of the Notice, will pay the financial intermediary, or its agent, the reasonable expenses of sending the Notice to such beneficial owners.

V. Additional Board Determinations for Funds Whose Stock Trades at a Premium

If:

A. A fund's common stock has traded on the exchange that it primarily trades on at the time in question at an average premium to NAV equal to or greater than 10%, as determined on the basis of the average of the discount or premium to NAV of the fund's common stock as of the close of each trading day over a 12-week rolling period (each such 12-week rolling period ending on the last trading day of each week); and

B. The fund's annualized distribution rate for such 12-week rolling period, expressed as a percentage of NAV as of the ending date of such 12-week rolling period, is greater than the fund's average annual total return in relation to the change in NAV over the 2-year period ending on the last day of such 12-week rolling period; then:

1. At the earlier of the next regularly scheduled meeting or within four months of the last day of such 12-week rolling period, the Board including a majority of the Independent Trustees:

(a) Will request and evaluate, and the Adviser will furnish, such information as may be reasonably necessary to make an informed determination of whether the Plan should be continued or continued after amendment;

(b) Will determine whether continuation, or continuation after amendment, of the Plan is consistent with the fund's investment objective(s) and policies and in the best interests of the fund and its stockholders, after considering the information in condition V.B.1.a above; including, without limitation:

(1) Whether the Plan is accomplishing its purpose(s);

(2) The reasonably foreseeable effects of the Plan on the fund's long-term total return in relation to the market price and NAV of the fund's common stock; and

(3) The fund's current distribution rate, as described in condition V.B above, compared to the fund's average annual total return over the 2-year period, as described in condition V.B, or such longer period as the Board deems appropriate; and

(c) Based upon that determination, will approve or disapprove the continuation, or continuation after amendment, of the Plan; and

2. The Board will record the information considered by it and the basis for its approval or disapproval of the continuation, or continuation after amendment, of the Plan in its meeting minutes, which must be made and preserved for a period of not less than six years from the date of such meeting, the first two years in an easily accessible place.

VI. Public Offerings

The fund will not make a public offering of the fund's common stock other than:

A. A rights offering below net asset value to holders of the fund's common stock;

B. An offering in connection with a dividend reinvestment plan, merger, consolidation, acquisition, spin-off or reorganization of the fund; or

C. An offering other than an offering described in conditions VI.A and VI.B above, unless, with respect to such other offering:

1. The fund's annualized distribution rate for the six months ending on the last day of the month ended immediately prior to the most recent distribution declaration date,[5] expressed as a percentage of NAV per share as of such date, is no more than 1 percentage point greater than the fund's average annual total return for the 5-year period ending on such date;[6] and

2. The transmittal letter accompanying any registration statement filed with the Commission in connection with such offering discloses that the fund has received an order under section 19(b) to permit it to make periodic distributions of long-term capital gains with respect to its common stock as frequently as twelve times each year, and as frequently as distributions are specified in accordance with the terms of any outstanding preferred stock that such fund may issue.

VII. Amendments to Rule 19b–1

The requested relief will expire on the effective date of any amendment to rule 19b-1 that provides relief permitting certain closed-end investment companies to make periodic distributions of long-term capital gains with respect to their outstanding common stock as frequently as twelve times each year.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6779 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

[5] If the fund has been in operation fewer than six months, the measured period will begin immediately following the fund's first public offering.

[6] If the fund has been in operation fewer than five years, the measured period will begin immediately following the fund's first public offering.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29179; File No. 812–13685]

Rydex Series Funds, et al.; Notice of Application

March 23, 2010.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from rule 12d1–2(a) under the Act.

Summary of Application: Applicants request an order to permit funds of funds relying on rule 12d1–2 under the Act to invest in certain financial instruments.

Applicants: Rydex Series Funds, Rydex Variable Trust (each, a "Trust" and together, the "Trusts"), PADCO Advisors, Inc., PADCO Advisors II, Inc. (collectively, the "PADCO Advisers"), and Rydex Distributors, Inc. (the "Distributor").

Filing Dates: The application was filed on August 27, 2009, and amended on January 14, 2010 and March 22, 2010.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 19, 2010 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state

the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090; *Applicants:* 9601 Blackwell Road, Suite 500, Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Lewis Reich, Senior Counsel, at (202) 551–6919, or Jennifer L. Sawin, Branch Chief, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations:

1. Each Trust is organized as a Delaware statutory trust, and each is registered with the Commission as an open-end management investment company. Each of the PADCO Advisers is organized as a Maryland corporation and is a wholly owned subsidiary of Security Benefit Corporation. PADCO Advisors, Inc. currently serves as the investment adviser to the Rydex Series Funds and PADCO Advisors II, Inc. currently serves as the investment adviser to the Rydex Variable Trust. Each Adviser is or will be registered as an investment adviser under the Investment Advisers Act of 1940, as amended, and the Distributor is registered as a broker-dealer under the Securities Exchange Act of 1934, as amended ("Exchange Act").

2. Applicants request the exemption on behalf of (i) Each Trust and all existing and future series of each Trust ("Funds"); (ii) any existing or future registered open-end management investment company or series thereof that is advised by the PADCO Advisers or any entity controlling, controlled by or under common control with the PADCO Advisers (collectively with the PADCO Advisers, the "Advisers") and that is in the same group of investment companies as defined in section 12(d)(1)(G) of the Act, as the Trusts (together with the Funds, the "Applicant Funds"); and (iii) any entity controlling, controlled by or under common control with the Advisers or the Distributor that, now or in the future, acts as principal underwriter with respect to the transactions described herein. Applicants request the exemption to the extent necessary to permit any Applicant Fund that may invest in other registered open-end investment companies including Applicant Funds ("Underlying Funds") in reliance on section 12(d)(1)(G) of the Act ("Fund of Funds") and that is also eligible to invest in securities (as defined in section 2(a)(36) of the Act) in reliance on rule 12d1–2 under the Act to also invest, to the extent consistent with its investment objective, policies, strategies and limitations, in financial instruments that may not be securities within the meaning of section 2(a)(36) of the Act ("Other Investments").[1]

3. Consistent with its fiduciary obligations under the Act, each Applicant Fund's board of trustees or directors will review the advisory fees charged by the Applicant Fund's investment adviser to ensure that they are based on services provided that are in addition to, rather than duplicative of, services provided pursuant to the advisory agreement of any investment company in which the Applicant Funds may invest.

Applicants' Legal Analysis:

1. Section 12(d)(1)(A) of the Act provides that no registered investment company ("acquiring company") may acquire securities of another investment company ("acquired company") if such securities represent more than 3% of the acquired company's outstanding voting stock or more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or cause more than 10% of the acquired company's voting stock to be owned by investment companies and companies controlled by them.

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) will not apply to securities of an acquired company purchased by an acquiring company if: (i) The acquired company and acquiring company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) of the Act by a securities association registered under section 15A of the Exchange Act or by the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on section 12(d)(1)(F) or (G) of the Act.

3. Rule 12d1–2 under the Act permits a registered open-end investment company or a registered unit investment trust that relies on section 12(d)(1)(G) of the Act to acquire, in addition to securities issued by another registered investment company in the same group of investment companies, government securities, and short-term paper: (1) Securities issued by an investment company that is not in the same group of investment companies, when the acquisition is in reliance on section 12(d)(1)(A) or 12(d)(1)(F) of the Act; (2) securities (other than securities issued by an investment company); and (3) securities issued by a money market fund, when the investment is in reliance on rule 12d1–1 under the Act. For the purposes of rule 12d1–2, "securities" means any security as defined in section 2(a)(36) of the Act.

4. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act, or from any rule under the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

5. Applicants state that the proposed arrangement would comply with the provisions of rule 12d1–2 under the Act, but for the fact that the Funds of Funds may invest a portion of their assets in Other Investments. Applicants request an order under section 6(c) of the Act for an exemption from rule 12d1–2(a) to allow the Funds of Funds to invest in Other Investments while investing in Underlying Funds. Applicants assert that permitting the Applicant Funds to invest in Other Investments as described in the application would not raise any of the concerns that the requirements of section 12(d)(1) were designed to address.

Applicants' Condition:

[1] Every existing entity that currently intends to rely on the requested order is named as an applicant. Any existing or future entity that relies on the order in the future will do so only in accordance with the terms and condition in the application.

Applicants agree that the order granting the requested relief will be subject to the following condition:

Applicants will comply with all provisions of rule 12d1–2 under the Act, except for paragraph (a)(2) to the extent that it restricts any Fund of Funds from investing in Other Investments as described in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6874 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61747; File No. SR–FINRA–2010–010]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update a Cross-Reference Within FINRA Rule 0150

March 19, 2010.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on March 9, 2010, Financial Industry Regulatory Authority, Inc. ("FINRA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 0150 (Application of Rules to Exempted Securities Except Municipal Securities) to update a cross-reference to reflect a change adopted in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook ("Consolidated FINRA Rulebook").[4] This process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references in the Consolidated FINRA Rulebook.

The proposed rule change would update a rule cross-reference to reflect changes adopted in the Consolidated FINRA Rulebook. Specifically, the proposed rule change would update FINRA Rule 0150 to reflect the incorporation into the Consolidated FINRA Rulebook of FINRA Rule 5160 (Disclosure of Price and Concessions in Selling Agreements) and the deletion of NASD Rule 2770 (Disclosure of Price in Selling Agreements). FINRA Rule 5160 was approved by the Commission on January 25, 2010 [5] and will become effective on April 19, 2010.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date for the proposed rule change will be April 19, 2010, the date on which the previously approved rule change will also be implemented.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and Rule 19b–4(f)(6) thereunder.[8]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE ("Incorporated NYSE Rules") (together, the NASD Rules and Incorporated NYSE Rules are referred to as the "Transitional Rulebook"). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE ("Dual Members"). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 61417 (January 25, 2010), 75 FR 5157 (February 1, 2010) (Order Approving File No. SR–FINRA–2009–086).

[6] 15 U.S.C. 78*o*–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(6). Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that at least five days prior to the instant filing, FINRA provided the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change.

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2010–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2010–010. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission,[9] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA and on its Web site at *www.finra.org*. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–FINRA–2010–010 and should be submitted on or before April 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6773 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

[9] The text of the proposed rule change is available on the Commission's Web site at *http://www.sec.gov/*.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61753; File No. 4–595]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

March 22, 2010.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on March 19, 2010, EDGA Exchange, Inc. ("EDGA Exchange" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") copies of proposed minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act[3] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with paragraph (c)(2) of Rule 19d–1 of the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. EDGA Exchange proposes to include in its proposed MRVP the policies and procedures currently included in EDGA Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").[5]

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under EDGA Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding.

Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 2.5. Interpretation .04, Firm Element Continuing Education Requirement; Rule 3.5 Advertising Practices; Rule 4.2 and Interpretations thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder, related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.15, requirement to identify short sale orders as such; Rule 11.16, requirement to comply with locked and crossed market rules; and Rule 12.11, Interpretation .01 and Exchange Act Rule 604—Failure to properly display limit orders.

EDGA Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] On March 12, 2010, the Commission approved EDGA Exchange's application for registration as a national securities exchange, including the rules governing EDGA Exchange. *See* Securities Exchange Act Release No. 61698, 75 FR 13151 (March 22, 2010). In the approval order, the Commission noted that EDGA Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of EDGA Exchange, the Exchange must file a minor rule violation plan with the Commission.

report will include: the Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[6]

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning EDGA Exchange's proposed Minor Rule Violation Plan, including whether the proposed plan is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. 4–595 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File No. 4–595. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Minor Rule Violation Plan change that are filed with the Commission, and all written communications relating to the proposed Minor Rule Violation Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4–595 and should be submitted on or before April 28, 2010.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder,[7] after April 28, 2010, the Commission may, by order, declare EDGA Exchange's proposed Minor Rule Violation Plan effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed Minor Rule Violation Plan, File No. 4–595, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61755; File No. SR–NYSEAmex–2010–27]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Amex Equities Rule 127 To Remove the Restrictions on the Execution of Block Cross Transactions Outside the Prevailing NYSE Amex Quotation

March 22, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 11, 2010, NYSE Amex LLC (the "Exchange" or "NYSE Amex") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Amex Equities Rule 127 ("Block Crosses Outside the Prevailing Exchange Quotation") to remove the restrictions on the execution of block cross transactions outside the prevailing NYSE Amex quotation to make such execution more consistent with prevailing industry standard and to delete all references to "percentage orders" in the rule text. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NYSE Amex LLC ("NYSE Amex" or the "Exchange") proposes to amend NYSE Amex Equities Rule 127 ("Block Crosses Outside the Prevailing Exchange Quotation") to remove restrictions on the execution of block cross transactions outside the prevailing NYSE Amex quotation to make such execution more consistent with prevailing industry standard and to delete all references to "percentage orders" in the rule text.

The Exchange notes that parallel changes are proposed to be made to the rules of the New York Stock Exchange LLC.[4]

Background: NYSE Amex Equities Rule 127 governs the execution of block cross transactions outside the Exchange quotation. NYSE Amex Equities Rule 127 prescribes the method of block cross executions for member organizations when the member organization intends to represent both sides of the proposed

[6] EDGA Exchange attached a sample form of the quarterly report with its submission to the Commission.

[7] 15 U.S.C. 78s(d)(1) and 17 CFR 240.19d–1(c)(2).

[8] 17 CFR 200.30–3(a)(44).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* SR–NYSE–2010–24.

cross as agent or will trade with one side of the cross in part or in whole as principal. The member organization handling the block orders must first trade with the displayed bid or offer (whichever is relevant to the proposed cross, *i.e.,* whether the cross is to be executed at a price lower than the bid or higher than the offer) including any reserve interest [5] at that bid or offer price when the member organization is trading as principal on one side of the transaction and is establishing or increasing a proprietary position as a result. The member organization then executes, in a single transaction, at the agreed upon block price, all limit orders on the Display Book® ("Display Book") [6] priced at or better than the block clean-up price. The result is two separate tape prints. If, however, the cross represents agency interest only or the liquidation of a member organization's position, the member organization must execute all orders on the Display Book priced better than the block clean-up price at a price one cent better than the clean-up price and then execute the block at the clean-up price. This results in three separate tape prints. The block cross will have execution priority at the clean-up price. None of these executions are subject to the procedural requirements of NYSE Amex Equities Rule 76 governing "crossing" orders with respect to offering the security at a minimum variation higher than the bid.

Two Print Execution Example: The NYSE Amex quote in XYZ is $20.05 bid for 10,000 shares with 5,000 shares offered at $20.10. There is no reserve interest at the best bid or offer or at the other bid prices. There are bids at $20.04, $20.03 and $20.02, each for 5,000 shares. A member organization intends to facilitate a block transaction of 50,000 shares at $20.02. The following executions occur:

The member organization sells to the 10,000 shares bid at $20.05. Next, the member organization sells 15,000 shares at a price of $20.02 to satisfy the 5,000 shares bids at $20.04, $20.03 and $20.02. The remaining 25,000 shares of the 50,000 share block order are crossed at $20.02 with the member organization buying 25,000 shares as principal from its customer.

Three Print Execution Example: The NYSE Amex quote in XYZ is $20.05 bid for 10,000 shares with 5,000 shares offered at $20.10. There is no reserve interest at the best bid or offer or at the other bid prices. There are bids for $20.04, $20.03 and $20.02, each for 5,000 shares. A member organization intends to facilitate a block transaction of 50,000 shares at $20.02 either representing customer (agency) buy side interest at $20.02 or liquidating a current position. The following executions occur:

The member organization sells 10,000 shares at $20.05 to satisfy the exposed bid price. Next, the member organization sells an additional 10,000 shares one cent better than the clean-up price at $20.03 to satisfy the bids at $20.04 and $20.03. The remaining 30,000 shares of the 50,000 share block cross order is crossed at $20.02 at the block clean-up price.

Proposed Amendment to NYSE Amex Equities Rule 127: Historically, NYSE Amex Equities Rule 127 provided a member organization with the ability to execute block transactions at a negotiated price outside the prevailing quote while providing price improvement to resting orders on the Display Book.

Block transactions effected pursuant to the Rule must be executed manually. The DMM assigned to the security must manually enter the information in the Display Book to effect each of the required transactions. Given the speed of execution and updating of quotations in the Exchange's current more electronic market, the DMM, in most securities, is physically unable to print the transaction at the bid and clean-up price, or bid, one cent better and the clean-up price prior to any quote changes or cancellations/replacements of orders. In the time it takes the DMM to manually print the block cross transaction pursuant to the steps set forth in NYSE Amex Equities Rule 127, quotes and prices in the market have been updated. As such, the member organization is unable to determine how many shares it must satisfy on the Display Book in order to effect the block transaction at the negotiated price.

Without the provisions of NYSE Amex Equities Rule 127, a member organization could electronically transmit an order to execute against the liquidity (displayed and non-displayed) available at each limit price until the bid/offer reached the price the member sought to cross his or her order.[7] However, because Rule 127 mandates that a member organization with a block of stock it intends to cross on the Floor at a specific clean-up price outside the current NYSE Amex quotation must follow the provisions of paragraph (b) of the Rule, member organizations are impeded in the execution of block cross transactions because of the physical inability of the DMM to print the block cross transactions consistent with the provisions of NYSE Amex Equities Rule 127. This physical impediment to the DMM's ability to print these transactions makes compliance with NYSE Amex Equities Rule 127 virtually impossible in the liquid securities traded on the Exchange.

The Exchange acknowledges that in order to provide for the efficient execution of block cross transactions outside the prevailing quote that affords a member organization the ability to cross stock at a negotiated price and provide price improvement to resting orders on the Display Book, system modifications are required. Such system modifications would allow for these trades to be executed consistent with the requirements of the proposed amendments to NYSE Amex Equities Rule 127, pursuant to the customer's instructions.

Given the inability of the DMM to manually print the required transaction pursuant to NYSE Amex Equities Rule 127 and the need for system modification, NYSE Amex proposes to amend NYSE Amex Equities Rule 127. The amendments would remove the current requirement in Rule 127 that a member organization with a block of stock that it intends to cross on the Floor at a specific clean-up price outside the current NYSE Amex quotation must comply with the provisions of Rule 127.[8] Specifically, the Exchange seeks to amend the rule text in NYSE Amex Equities Rule 127(b) by replacing the word "should" with "may" in order to remove the restrictive language that would require member organizations to execute block cross transactions outside the prevailing NYSE Amex quotation pursuant to the specific provisions of the rule.

Pursuant to proposed NYSE Amex Equities Rule 127(b), the member organization may execute block crosses

[5] Reserve interest is that portion of a bid or offer that is designated as not to be displayed, *i.e.,* is in "reserve."

[6] The Display Book® system is an order management and execution facility. The Display Book receives and displays orders to the DMMs, contains order information and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book is connected to a number of other Exchange systems for the purposes of comparison, surveillance and reporting information to customers and other market data and national market systems.

[7] This is similar to the method employed by off-Floor participants wherein orders are sent to market centers for execution against protected quotes and the balance of the cross order is then printed on a trade reporting facility.

[8] E-mail from Jennifer D. Kim, Counsel, NYSE Regulation, to Theodore Venuti, Special Counsel, Division of Trading and Markets, Commission, dated March 17, 2010.

outside the prevailing quote prescribed in NYSE Amex Equities Rule 127 or in the same manner as large non-block trades are currently executed. The member organization may electronically route an order to the Display Book that will satisfy protected quotes in other markets and sweep orders on the Display Book to the cross price and manually cross the remainder of the initiating order if market conditions permit, *i.e.,* if the remainder of the initiating order will be executed at the National Best Bid or Offer ("NBBO") or consistent with the intermarket sweep order exception under Reg NMS or any other applicable trade-through exception or exemption that may apply. This cross transaction shall be consistent with all NYSE Amex Equities Rules, including those rules related to priority and parity.[9] Member organizations will continue to be required to comply with all Reg NMS obligations.[10]

Finally, the Exchange seeks to delete all references in the rule text to "percentage orders." Percentage orders were eliminated as a valid order type on the Exchange in a previously approved NYSE filing.[11] The references in NYSE Amex Equities Rule 127 were inadvertently left in and should be deleted.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5)[12] that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change supports these provisions because the proposed amendment removes the current impediment to NYSE Amex members organizations' ability to execute block cross orders and offers an alternate method while the Exchange develops a better mechanism for the execution of block cross orders outside the prevailing quotation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6)[17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change would allow member organizations to execute block cross transactions outside the prevailing NYSE Amex quotation consistent with the manner that large, non-block size orders may currently be executed on the Exchange and on other market centers. The proposed rule change is consistent with Regulation NMS and the Commission does not believe that it raises any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2010–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2010–27. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[20] all subsequent amendments, all written statements

[9] *See e.g.* NYSE Amex Equities Rule 72.

[10] 17 CFR 242.600 *et seq.; See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[11] *See* Securities Exchange Act Release No.58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] The text of the proposed rule change is available on the Commission's Web site at *http://sec.gov/rules/sro/shtml.*

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEAmex–2010–27 and should be submitted on or before April 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6836 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61752; File No. 4–594]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing of Proposed Minor Rule Violation Plan

March 22, 2010.

Pursuant to Section 19(d)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19d–1(c)(2) thereunder,[2] notice is hereby given that on March 19, 2010, EDGX Exchange, Inc. ("EDGX Exchange" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") copies of proposed minor rule violations with sanctions not exceeding $2,500 which would not be subject to the provisions of Rule 19d–1(c)(1) of the Act [3] requiring that a self-regulatory organization promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.[4] In accordance with paragraph (c)(2) of Rule 19d–1 of the Act, the Exchange proposed to designate certain specified rule violations as minor rule violations, and requests that it be relieved of the reporting requirements regarding such violations, provided it gives notice of such violations to the Commission on a quarterly basis. EDGX Exchange proposes to include in its proposed MRVP the policies and procedures currently included in EDGX Exchange Rule 8.15 ("Imposition of Fines for Minor Violation(s) of Rules").[5]

According to the Exchange's proposed MRVP, under Rule 8.15, the Exchange may impose a fine (not to exceed $2,500) on a member or an associated person with respect to any rule listed in Rule 8.15.01. The Exchange shall serve the person against whom a fine is imposed with a written statement setting forth the rule or rules violated, the act or omission constituting each such violation, the fine imposed, and the date by which such determination becomes final or by which such determination must be contested. If the person against whom the fine is imposed pays the fine, such payment shall be deemed to be a waiver of such person's right to a disciplinary proceeding and any review of the matter under EDGX Exchange rules. Any person against whom a fine is imposed may contest the Exchange's determination by filing with the Exchange a written response, at which point the matter shall become a disciplinary proceeding. Under Rule 8.15.01, violations of the following rules would be appropriate for disposition under the minor rule violations plan: Rule 2.5. Interpretation .04, Firm Element Continuing Education Requirement; Rule 3.5 Advertising Practices; Rule 4.2 and Interpretations thereunder, requiring the submission of responses to Exchange requests for trading data within specified time period; Rule 4.2 and Interpretations thereunder, related to the requirement to furnish Exchange-related order, market and transaction data, as well as financial or regulatory records and information; Rule 11.15, requirement to identify short sale orders as such; Rule 11.16, requirement to comply with locked and crossed market rules; and Rule 12.11, Interpretation .01 and Exchange Act Rule 604—Failure to properly display limit orders.

EDGX Exchange proposed to include the rule violations listed in Rule 8.15.01 in its minor rule violation plan. Upon approval of the plan, the Exchange will provide the Commission a quarterly report of actions taken on minor rule violations under the plan. The quarterly report will include: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition.[6]

I. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning EDGX Exchange's proposed Minor Rule Violation Plan, including whether the proposed plan is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/other.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. 4–594 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549.

All submissions should refer to File No. 4–594. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/other.shtml*).

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[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(d)(1).

[2] 17 CFR 240.19d–1(c)(2).

[3] 17 CFR 240.19d–1(c)(1).

[4] The Commission adopted amendments to paragraph (c) of Rule 19d–1 to allow self-regulatory organizations ("SROs") to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with the Commission shall not be considered "final" for purposes of Section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

[5] On March 12, 2010, the Commission approved EDGX Exchange's application for registration as a national securities exchange, including the rules governing EDGX Exchange. *See* Securities Exchange Act Release No. 61698, 75 FR 13151 (March 18, 2010). In the approval order, the Commission noted that EDGX Exchange Rule 8.15 provides for the imposition of fines for minor rule violations pursuant to a minor rule violation plan. Accordingly, the Commission noted that as a condition to the operation of EDGX Exchange, the Exchange must file a minor rule violation plan with the Commission.

[6] EDGX Exchange attached a sample form of the quarterly report with its submission to the Commisision.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed Minor Rule Violation Plan that are filed with the Commission, and all written communications relating to the proposed Minor Rule Violation Plan between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. 4–594 and should be submitted on or before April 28, 2010.

II. Date of Effectiveness of the Proposed Minor Rule Violation Plan and Timing for Commission Action

Pursuant to Section 19(d)(1) of the Act and Rule 19d–1(c)(2) thereunder,[7] after April 28, 2010, the Commission may, by order, declare EDGX Exchange's proposed Minor Rule Violation Plan effective if the plan is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act. The Commission in its order may restrict the categories of violations to be designated as minor rule violations and may impose any other terms or conditions to the proposed Minor Rule Violation Plan, File No. 4–594, and to the period of its effectiveness which the Commission deems necessary or appropriate in the public interest, for the protection of investors or otherwise in furtherance of the purposes of this Act.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6774 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

[7] 15 U.S.C. 78s(d)(1) and 17 CFR 240.19d–1(c)(2).

[8] 17 CFR 200.30–3(a)(44).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61756; File No. SR–NYSE–2010–24]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending NYSE Rule 127 To Remove the Restrictions on the Execution of Block Cross Transactions Outside the Prevailing NYSE Quotation

March 22, 2010.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the "Act")[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on March 11, 2010, New York Stock Exchange LLC ("NYSE" or the "Exchange") filed with the Securities and Exchange Commission (the "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Rule 127 ("Block Crosses Outside the Prevailing NYSE Quotation") to remove the restrictions on the execution of block cross transactions outside the prevailing NYSE quotation to make such execution more consistent with prevailing industry standard and to delete all references to "percentage orders" in the rule text. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *http://www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The New York Stock Exchange ("NYSE" or the "Exchange") proposes to amend NYSE Rule 127 ("Block Crosses Outside the Prevailing NYSE Quotation") to remove restrictions on the execution of block cross transactions outside the prevailing NYSE quotation to make such execution more consistent with prevailing industry standard and to delete all references to "percentage orders" in the rule text.

The Exchange notes that parallel changes are proposed to be made to the rules of NYSE Amex LLC (formerly the American Stock Exchange).[4]

Background: NYSE Rule 127 governs the execution of block cross transactions outside the Exchange quotation. NYSE Rule 127 prescribes the method of block cross executions for member organizations when the member organization intends to represent both sides of the proposed cross as agent or will trade with one side of the cross in part or in whole as principal. The member organization handling the block orders must first trade with the displayed bid or offer (whichever is relevant to the proposed cross, *i.e.,* whether the cross is to be executed at a price lower than the bid or higher than the offer) including any reserve interest[5] at that bid or offer price when the member organization is trading as principal on one side of the transaction and is establishing or increasing a proprietary position as a result. The member organization then executes, in a single transaction, at the agreed upon block price, all limit orders on the Display Book® ("Display Book")[6] priced at or better than the block clean-up price. The result is two separate tape prints. If, however, the cross represents agency interest only or the liquidation of a member organization's position, the member organization must execute all orders on the Display Book priced better than the block clean-up price at a price one cent better than the clean-up price

[4] *See* SR–NYSEAmex–2010–27.

[5] Reserve interest is that portion of a bid or offer that is designated as not to be displayed, *i.e.,* is in "reserve."

[6] The Display Book® system is an order management and execution facility. The Display Book receives and displays orders to the DMMs, contains order information and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book is connected to a number of other Exchange systems for the purposes of comparison, surveillance and reporting information to customers and other market data and national market systems.

and then execute the block at the clean-up price. This results in three separate tape prints. The block cross will have execution priority at the clean-up price. None of these executions are subject to the procedural requirements of NYSE Rule 76 governing "crossing" orders with respect to offering the security at a minimum variation higher than the bid.

Two Print Execution Example: The NYSE quote in XYZ is $20.05 bid for 10,000 shares with 5,000 shares offered at $20.10. There is no reserve interest at the best bid or offer or at the other bid prices. There are bids at $20.04, $20.03 and $20.02, each for 5,000 shares. A member organization intends to facilitate a block transaction of 50,000 shares at $20.02. The following executions occur:

The member organization sells to the 10,000 shares bid at $20.05. Next, the member organization sells 15,000 shares at a price of $20.02 to satisfy the 5,000 shares bids at $20.04, $20.03 and $20.02. The remaining 25,000 shares of the 50,000 share block order are crossed at $20.02 with the member organization buying 25,000 shares as principal from its customer.

Three Print Execution Example: The NYSE quote in XYZ is $20.05 bid for 10,000 shares with 5,000 shares offered at $20.10. There is no reserve interest at the best bid or offer or at the other bid prices. There are bids for $20.04, $20.03 and $20.02, each for 5,000 shares. A member organization intends to facilitate a block transaction of 50,000 shares at $20.02 either representing customer (agency) buy side interest at $20.02 or liquidating a current position. The following executions occur:

The member organization sells 10,000 shares at $20.05 to satisfy the exposed bid price. Next, the member organization sells an additional 10,000 shares one cent better than the clean-up price at $20.03 to satisfy the bids at $20.04 and $20.03. The remaining 30,000 shares of the 50,000 share block cross order is crossed at $20.02 at the block clean-up price.

Proposed Amendment to NYSE Rule 127: Historically, NYSE Rule 127 provided a member organization with the ability to execute block transactions at a negotiated price outside the prevailing quote while providing price improvement to resting orders on the Display Book.

Block transactions effected pursuant to the Rule must be executed manually. The DMM assigned to the security must manually enter the information in the Display Book to effect each of the required transactions. Given the speed of execution and updating of quotations in the Exchange's current more electronic market, the DMM, in most securities, is physically unable to print the transaction at the bid and clean-up price, or bid, one cent better and the clean-up price prior to any quote changes or cancellations/replacements of orders. In the time it takes the DMM to manually print the block cross transaction pursuant to the steps set forth in NYSE Rule 127, quotes and prices in the market have been updated. As such, the member organization is unable to determine how many shares it must satisfy on the Display Book in order to effect the block transaction at the negotiated price.

Without the provisions of NYSE Rule 127, a member organization could electronically transmit an order to execute against the liquidity (displayed and non-displayed) available at each limit price until the bid/offer reached the price the member sought to cross his or her order.[7] However, because Rule 127 mandates that a member organization with a block of stock it intends to cross on the Floor at a specific clean-up price outside the current NYSE quotation must follow the provisions of paragraph (b) of the Rule, member organizations are impeded in the execution of block cross transactions because of the physical inability of the DMM to print the block cross transactions consistent with the provisions of NYSE Rule 127. This physical impediment to the DMM's ability to print these transactions makes compliance with NYSE Rule 127 virtually impossible in the liquid securities traded on the Exchange.

The Exchange acknowledges that in order to provide for the efficient execution of block cross transactions outside the prevailing quote that affords a member organization the ability to cross stock at a negotiated price and provide price improvement to resting orders on the Display Book, system modifications are required. Such system modifications would allow for these trades to be executed consistent with the requirements of the proposed amendments to NYSE Rule 127, pursuant to the customer's instructions.

Given the inability of the DMM to manually print the required transaction pursuant to NYSE Rule 127 and the need for system modification, NYSE proposes to amend NYSE Rule 127. The amendments would remove the current requirement in Rule 127 that a member organization with a block of stock that it intends to cross on the Floor at a specific clean-up price outside the current NYSE quotation must comply with the provisions of Rule 127.[8] Specifically, the Exchange seeks to amend the rule text in NYSE Rule 127(b) by replacing the word "should" with "may" in order to remove the restrictive language that would require member organizations to execute block cross transactions outside the prevailing NYSE quotation pursuant to the specific provisions of the rule.

Pursuant to proposed NYSE Rule 127(b), the member organization may execute block crosses outside the prevailing quote prescribed in NYSE Rule 127 or in the same manner as large non-block trades are currently executed. The member organization may electronically route an order to the Display Book that will satisfy protected quotes in other markets and sweep orders on the Display Book to the cross price and manually cross the remainder of the initiating order if market conditions permit, *i.e.,* if the remainder of the initiating order will be executed at the National Best Bid or Offer ("NBBO") or consistent with the intermarket sweep order exception under Reg NMS or any other applicable trade-through exception or exemption that may apply. This cross transaction shall be consistent with all NYSE Rules, including those rules related to priority and parity.[9] Member organizations will continue to be required to comply with all Reg NMS obligations.[10]

Finally, the Exchange seeks to delete all references in the rule text to "percentage orders." Percentage orders were eliminated as a valid order type on the Exchange in a previously approved filing.[11] The references in NYSE Rule 127 were inadvertently left in and should be deleted.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under Section 6(b)(5) [12] that an Exchange have rules that are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and

[7] This is similar to the method employed by off-Floor participants wherein orders are sent to market centers for execution against protected quotes and the balance of the cross order is then printed on a trade reporting facility.

[8] Email from Jennifer D. Kim, Counsel, NYSE Regulation, to Theodore Venuti, Special Counsel, Division of Trading and Markets, Commission, dated March 17, 2010.

[9] *See e.g.* NYSE Rule 72.

[10] 17 CFR 242.600 *et seq.; See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[11] *See* Securities Exchange Act Release No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46).

[12] 15 U.S.C. 78f(b)(5).

facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes the proposed rule change supports these provisions because the proposed amendment removes the current impediment to NYSE members organizations' ability to execute block cross orders and offers an alternate method while the Exchange develops a better mechanism for the execution of block cross orders outside the prevailing quotation.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to section 19(b)(3)(A)(iii) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [15] and Rule 19b–4(f)(6)(iii) thereunder.[16]

A proposed rule change filed under Rule 19b–4(f)(6) [17] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[18] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission notes that the proposed rule change would allow member organizations to execute block cross transactions outside the prevailing NYSE quotation consistent with the manner that large, non-block size orders may currently be executed on the Exchange and on other market centers. The proposed rule change is consistent with Regulation NMS and the Commission does not believe that it raises any new substantive issues. For these reasons, the Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission designates the proposed rule change as operative upon filing.[19]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2010–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2010–24. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission,[20] all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSE–2010–24 and should be submitted on or before April 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6837 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

[13] 15 U.S.C. 78s(b)(3)(A)(iii).

[14] 17 CFR 240.19b–4(f)(6).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that the Exchange has satisfied this requirement.

[18] 17 CFR 240.19b–4(f)(6)(iii).

[19] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] The text of the proposed rule change is available on the Commission's Web site at: *http://sec.gov/rules/sro.shtml.*

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61762; File No. SR–NSCC–2010–02]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Aggregate Obligations in Certain Securities Transactions Designated for Settlement on a Trade-for-Trade Basis

March 23, 2010.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 4, 2010, The National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. NSCC filed the proposal pursuant to Section 19(b)(3)(A)(iii) of the Act [2] and Rule 19b–4(f)(4) [3] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to allow NSCC to aggregate obligations in certain securities transactions designated for settlement on a trade-for-trade basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC may designate some or all transactions in a security to settle on a trade-for-trade basis.[5] In such cases, NSCC marks the transaction as a Special Trade and provides the counterparties with corresponding receive and deliver instructions to settle the transaction between themselves. Independent of action by NSCC, members may also agree to settle a transaction on a trade-for-trade basis and mark it as a Special Trade.

NSCC proposes amending its Rules so that when NSCC is responsible for designating a transaction to settle as a Special Trade it may aggregate the daily receive and deliver obligations in that security between the counterparties. As a result, each counterparty at the end of the day would have only one aggregate receive obligation and one aggregate deliver obligation in the designated security as opposed to individually settling the multiple transactions.[6] The resulting buy order obligation and sell order obligation between the counterparties would not be netted against each other.[7] Receive and deliver orders for transactions designated by Members as Special Trades would continue to be issued on an individual transaction basis.

To facilitate this proposal, NSCC would amend Procedure II of its Rules to provide for aggregated receive and deliver instructions for trade-for-trade items and to clarify that receive and deliver instructions for trade-for-trade items are reported on the Consolidated Trade Summary. The proposed changes to NSCC's Rules can be found in Exhibit 5 to proposed rule change SR–NSCC–2010–02 at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010–02.pdf.*

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act [8] and the rules and regulations thereunder applicable to NSCC because the proposed rule change promotes efficiencies in the clearance and settlement of securities transactions by modifying NSCC's Rules to reduce the number of settlement obligations for members when NSCC designates a transaction as a Special Trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not yet been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act [9] and Rule 19b–4(f)(4) [10] thereunder because the proposed rule change effects a change in an existing service of a registered clearing agency that: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Electronic comments may be submitted by using the Commission's

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(iii).

[3] 17 CFR 240.19b–4(f)(4).

[4] The Commission has modified the text of the summaries prepared by NSCC.

[5] This practice is addressed by NSCC's Rules and Procedures in the section titled "Procedure II. Trade Comparison and Recording Service."

[6] As is currently the case for trade-for-trade items, NSCC would not guaranty the settlement of transactions aggregated pursuant to this proposal.

[7] For example, if on a given day Broker A has 15 buys against Broker B in Security X, the transactions would be aggregated into one receive obligation for A and one deliver obligation for B. Likewise, if Broker A has 20 sells with Broker B on that same day for the same security, those items would also be aggregated into one deliver obligation for A and one receive obligation for B. In this example, A and B would each have two settlement obligations with the other party for Security X rather than the 35 obligations each would have without aggregation.

[8] 15 U.S.C. 78q–1.

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(4).

Internet comment form (*http://www.sec.gov/rules/sro.shtml*), or

• Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NSCC–2010–02 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2010–02. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2010/nscc/2010–02.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NSCC–2010–02 and should be submitted on or before April 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6873 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–61757; File No. SR–NASDAQ–2010–036)]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Clarify and Modify the Applicability of Nasdaq Rule 5615 To Exchange Traded Funds

March 22, 2010.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1], and Rule 19b–4[2] thereunder, notice is hereby given that on March 11, 2010, The NASDAQ Stock Market LLC ("Nasdaq" or "the Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as constituting a non-controversial rule change under Rule 19b–4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to clarify and modify the applicability of Nasdaq Rule 5615 to Exchange Traded Funds. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in [brackets].[4]

* * * * *

5615. Exemptions from Certain Corporate Governance Requirements

This rule provides the exemptions from the corporate governance rules afforded to certain types of Companies, and sets forth the phase-in schedules for initial public offerings, Companies emerging from bankruptcy and Companies transferring from other markets. This rule also describes the applicability of the corporate governance rules to controlled companies and sets forth the phase-in schedule afforded to Companies ceasing to be controlled companies.

(a) Exemptions to the Corporate Governance Requirements

(1) Asset-backed Issuers and Other Passive Issuers

The following are exempt from the requirements relating to Majority Independent Board {*Rule* 5605(b)}, Audit Committee {*Rule* 5605(c)}, Independent Director Oversight of Executive Officer Compensation {*Rule* 5605(d)} and Director Nominations {*Rule* 5605(e)}, the Controlled Company Exemption {*Rule* 5615(c)(2)}, and Code of Conduct {*Rule* 5610}:

(A) No change.

(B) issuers, such as unit investment trusts, *including Portfolio Depository Receipts, which* [that] are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities.

* * * * *

(2)–(4) No change.

(5) Management Investment Companies

Management investment companies (including business development companies) are subject to all the requirements of the Rule 5600 Series, except that management investment companies registered under the Investment Company Act of 1940 are exempt from the Independent Directors requirement, the Independent Director Oversight of Executive Officer Compensation and Director Nominations requirements, and the Code of Conduct requirement, set forth in Rules 5605(b), (d) and (e) and 5610, respectively. *In addition, management investment companies that are Index Fund Shares and Managed Fund Shares, as defined in Rules 5705(b) and 5735, are exempt from the Audit Committee requirements set forth in Rule 5605(c), except for the applicable requirements of SEC Rule 10A–3.*

IM–5615–4. Management Investment Companies

Management investment companies registered under the Investment Company Act of 1940 are already subject to a pervasive system of federal regulation in certain areas of corporate governance covered by 5600. In light of this, Nasdaq exempts from Rules 5605(b), (d), (e) and 5610 management investment companies registered under the Investment Company Act of 1940. Business development companies, which are a type of closed-end management investment company defined in Section 2(a)(48) of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] Changes are marked to the rules of The NASDAQ Stock Market LLC found at *http://nasdaq.cchwallstreet.com.*

Investment Company Act of 1940 that are not registered under that Act, are required to comply with all of the provisions of the Rule 5600 Series. *Management investment companies that are Index Fund Shares and Managed Fund Shares are exempt from the Audit Committee requirements set forth in Rule 5605(c), except for the applicable requirements of SEC Rule 10A–3.*

(b)–(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to clarify and modify the applicability of certain of its corporate governance requirements to exchange traded funds ("ETFs"). Nasdaq currently lists ETFs formed as unit investment trusts ("UITs") or as management investment companies.[5] ETFs organized as UITs are listed under Rule 5705(a) and called Portfolio Depository Receipts, while ETFs organized as management investment companies are listed under Rule 5705(b) and called Index Fund Shares or listed under Rule 5735 and called Managed Fund Shares. However, the exemptions available to the corporate governance requirements are not presently consistent among ETFs organized under these different legal structures.

Nasdaq Rule 5615(a)(1)(B) exempts UITs from certain corporate governance requirements.[6] Because Portfolio Depository Receipts are UITs, they are exempt from, among other things, the requirements in Rule 5605(b)–(e) and Rule 5610 related to majority independent board, audit committees, independent director oversight of executive officer compensation and director nominations, and the code of conduct under the corporate governance requirements, respectively. Nasdaq proposes to amend Rule 5615(a)(1)(B) to specifically add a reference to Portfolio Depository Receipts in order to remove any ambiguity about the applicability of these exemptions to Portfolio Depository Receipts.

Nasdaq Rule 5615(a)(5) and IM–5615–4 grant exemptions for ETFs that are structured as management investment companies from the requirements of Rule 5605(b) (majority independent board), Rules 5605(d) and (e) (independent director oversight of executive officer compensation and director nominations), and Rule 5610 (code of conduct). Unlike Rule 5615(a)(1), Rule 5615(a)(5) does not include an exemption from Rule 5605(c), relating to Nasdaq's audit committee requirements. As such, ETFs that are formed as management investment companies and listed as Index Fund Shares or Managed Fund Shares are currently subject to the audit committee requirements, whereas ETFs that are formed as UITs and listed as Portfolio Depository Receipts are not subject to those requirements.

Nasdaq proposes to expand the exemption in Rule 5615(a)(5) and IM–5615–4 to also exempt ETFs that are formed as management investment companies from most of the audit committee requirement of Rule 5605(c), thereby largely eliminating this difference.[7] Notwithstanding this proposed change, one difference will remain: ETFs formed as management investment companies must comply with the applicable provisions of SEC Rule 10A–3 of the Securities Exchange Act of 1934[8] ("SEC Rule 10A–3") and the proposed rule change will specifically state that requirement. This proposed change will conform Nasdaq's treatment of these ETFs that are management investment companies with that of other markets.[9]

Moreover, Nasdaq believes that it is appropriate to make these changes because, as stated in IM–5615–4, these entities are subject to the Investment Company Act of 1940 and the pervasive system of federal regulation. This includes, among other things, assigning important duties of investment company governance, such as approval of investment advisory contracts, to independent directors.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(5) of the Act[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The proposed change is designed to harmonize the applicability of Nasdaq's corporate governance rules to various types of ETFs and will treat similarly situated companies in the same manner.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time

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[5] Section 4 of the Investment Company Act of 1940 classifies investment companies in three principal classes: Face-amount certificate companies, UITs, and management companies. 15 U.S.C. 80a–4. Management companies are further divided into open-end and closed-end companies. 15 U.S.C. 80a–5(a). All ETFs are open-end companies.

[6] Specifically, Rule 5615(a)(1)(B) exempts "issuers, such as unit investment trusts, that are organized as trusts or other unincorporated associations that do not have a board of directors or persons acting in a similar capacity and whose activities are limited to passively owning or holding (as well as administering and distributing amounts in respect of) securities, rights, collateral or other assets on behalf of or for the benefit of the holders of the listed securities."

[7] Management investment companies other than ETFs must still comply with the audit committee requirement of Rule 5605(c) and SEC Rule 10A–3.

[8] 17 CFR 240.10A–3.

[9] NYSEArca Equities Rule 5.3, in part, details specifically which corporate governance requirements apply to "special purpose companies." A special purpose company is defined to include a company listed under NYSEArca Equities Rule 5.2(j)(3), which contains NYSEArca's provisions for listing ETFs, called Investment Company Units, which include registered investment companies organized as UITs or open-end management investment companies. *See also* NYSE Listed Company Manual Section 303A.00, which similarly provides that the NYSE's corporate governance requirements contained in Section 303A do not apply to securities listed under Section 703.16, relating to Investment Company Units, which can be organized as unit investment trusts or open-end management investment companies.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6)(iii) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii)[14] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. In its filing, Nasdaq requested the waiver in order to provide immediate clarity to its rules and to eliminate any disparity between its rules and those of other exchanges with similar exemptions that have been previously approved by the Commission.

The Commission believes that waiver of the 30-day operative period is consistent with the protection of investors and the public interest. The proposed rule change will clarify an ambiguity in Nasdaq's rules, which should benefit investors, Nasdaq members, and regulators. In addition, the Commission notes that, as Nasdaq has pointed out, the changes proposed in this filing would conform certain of Nasdaq's corporate governance standards to those of other exchanges.[15] Accordingly, the Commission designates the proposal to be operative upon filing with the Commission.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2010–036 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2010–036. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549–1090 on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2010–036 and should be submitted on or before April 19, 2010.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. 2010–6838 Filed 3–26–10; 8:45 am]

BILLING CODE 8011–01–P

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission notes that Nasdaq satisfied the five-day pre-filing notice requirement.

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] *See supra,* note 9.

[16] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Bureau of Diplomatic Security, Office of Foreign Missions

[Public Notice: 6932]

Notice of Request for Public Comments; 60-Day Notice of Proposed Information Collection: Forms DS–4138, Request for Escort Screening Courtesies; DS–4139, Photograph and Signature Card; & DS–4140, Application for OFM Web Site Account; Foreign Diplomatic Services Applications, OMB Collection Number 1405–0105

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- *Title of Information Collection:* Request for Escort Screening Courtesies.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Numbers:* DS–4138.
- *Respondents:* Foreign government representatives assigned to the United States.
- *Estimated Number of Respondents:* 350 missions.
- *Estimated Number of Responses:* 3,000 responses .
- *Average Hours per Response:* 10 minutes.
- *Total Estimated Burden:* 500 hours divided among the missions.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to obtain or retain a benefit.
- *Title of Information Collection:* Photograph and Signature Card.
- *OMB Control Number:* 1405–0105.
- *Type of Request:* Revision of Currently Approved Collection.
- *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).
- *Form Number:* DS–4139.
- *Respondents:* Foreign government representatives assigned to the United States.
- *Estimated Number of Respondents:* 350 missions.
- *Estimated Number of Responses:* 18,000 forms per year.

• *Average Hours per Response:* 10 minutes.

• *Total Estimated Burden:* 3,000 hours divided among the missions.

• *Frequency:* On occasion.

• *Obligation to Respond:* Required to obtain or retain a benefit.

• *Title of Information Collection:* Application for OFM Web site Account.

• *OMB Control Number:* 1405–0105.

• *Type of Request:* Revision of Currently Approved Collection.

• *Originating Office:* Diplomatic Security/Office of Foreign Missions (DS/OFM).

• *Form Numbers:* DS–4140.

• *Respondents:* Foreign government representatives assigned to the United States.

• *Estimated Number of Respondents:* 350 missions.

• *Estimated Number of Responses:* 456 responses .

• *Average Hours per Response:* 10 minutes.

• *Total Estimated Burden:* 76 hours divided among the missions.

• *Frequency:* On occasion..

• *Obligation to Respond:* Required to obtain or retain a benefit.

DATES: The Department will accept comments from the public up to 60 days from date of publication in the **Federal Register**.

ADDRESSES: You may submit comments by either of the following methods:

• *E-mail: OFMInfo@state.gov.*

• *Mail:* U.S. Department of State, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington, DC 20520.

You must include the DS form number, information collection title, and OMB control number in any correspondence.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Attn: Jacqueline Robinson, Diplomatic Security, Office of Foreign Missions, 2201 C Street, NW., Room 2238, Washington, DC 20520 who may be reached on (202) 647–3416 or *OFMInfo@state.gov.*

SUPPLEMENTARY INFORMATION:

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper performance of our functions.

• Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: The Foreign Diplomatic Service Applications are all associated with OMB Collection number 1405–0105. Form DS–4138 (Request for Escort Screening Courtesies) is the means by which the U.S. Department of State (DOS) will adjudicate requests for assignment of a DOS representative to escort eligible senior officials of foreign governments through the airport security screening process. The request will be used to review for entitlement to the courtesy, the specific airport to be advised, and the assignment of a DOS escort. Form DS–4139 (Photograph and Signature Card) is the means by which the Department obtains a photograph and/or signature for use in the productions of an identification card, a sales tax exemption card, or DOS driver license when applications are submitted electronically (thru e-Gov) for foreign mission personnel and their dependents. Also, form DS–4140 (Application for OFM Web site Account) is the means by which the Department provides accredited foreign mission administrative staff authorized access to the Office of Foreign Missions' electronic data submission (e-Gov) system. OFM's e-Gov system is accessed to submit automated service requests to the Office of Foreign Missions and the Office of Protocol of the U.S. State Department to obtain "benefits" designated under the Foreign Missions Act, 22 U.S.C. 4301 *et seq.,* and must be obtained through the U.S. Department of State. The applications provide the Department with the necessary information to administer its programs effectively and efficiently.

Methodology: These applications/information collections are submitted by all foreign missions to the Office of Foreign Missions via the following methods: mail, personal delivery, and/or electronically.

Dated: February 3, 2010.

Steve Maloney,

Managing Director Bureau of Diplomatic Security, Office of Foreign Missions, U.S. Department of State.

[FR Doc. 2010–6908 Filed 3–26–10; 8:45 am]

BILLING CODE 4710–43–P

DEPARTMENT OF STATE

[Public Notice 6935]

Waiver of Restriction on Assistance to the Central Government of Tajikistan

Pursuant to section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7086(c)(1) of the Act with respect to the Government of Tajikistan, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: March 22, 2010.

Jacob J. Lew,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2010–6911 Filed 3–26–10; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF STATE

[Public Notice 6933]

Waiver of Restriction on Assistance to the Central Government of Turkmenistan

Pursuant to section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7086(c)(1) of the Act with respect to the Government of Turkmenistan, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register.**

Dated: March 22, 2010.

Jacob J. Lew,

Deputy Secretary of State for Resource and Management.

[FR Doc. 2010–6909 Filed 3–26–10; 8:45 am]

BILLING CODE 4710—46–P

DEPARTMENT OF STATE

[Public Notice 6934]

Waiver of Restriction on Assistance to the Central Government of Uzbekistan Related to Budget Transparency

Pursuant to section 7086(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2010 (Division F, Pub. L. 111–117) ("the Act"), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7086(c)(1) of the Act with respect to the Government of Uzbekistan, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register**.

Dated: March 22, 2010.

Jacob J. Lew,

Deputy Secretary of State for Management and Resources.

[FR Doc. 2010–6910 Filed 3–26–10; 8:45 am]

BILLING CODE 4710–46–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2010–005–N–5]

Railroad Safety Technology Program Grant Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of Funds Availability, Solicitation of Applications.

SUMMARY: The Rail Safety Technology Program is a newly authorized program under the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432; October 16, 2008). The program authorizes the Department of Transportation to provide grants to passenger and freight rail carriers, railroad suppliers, and State and local governments for projects that have a public benefit of improved railroad safety and efficiency. The program makes available $50,000,000 in Federal funds. This grant program has a maximum 80 percent Federal and minimum 20 percent grantee cost share (cash or in-kind) match requirement.

DATES: FRA will begin accepting grant applications 10 days after publication of this Notice of Funding Availability in the **Federal Register**. Applications may be submitted until July 1, 2010. Reviews will be conducted immediately following the solicitation close date. Selection announcements will be made on or around September 3, 2010.

ADDRESSES: Applications for grants under this Program must be submitted electronically to Grants.gov (*http://www.grants.gov*) following the detailed procedures in the grant application package online. The Grants.gov Web site allows organizations to find and apply electronically for competitive grant opportunities from all Federal grant-making agencies. Any entity wishing to submit an application pursuant to this notice should immediately initiate the process of registering with Grants.Gov.

FOR FURTHER INFORMATION CONTACT: Those interested in responding to this solicitation are strongly encouraged to first call Dr. Mark Hartong, FRA, Senior Electronics Engineer (Phone: (202) 493–1332; e-mail: *Mark.Hartong@dot.gov*), or Mr. David Blackmore, FRA, Program Manager–Advanced Technologies (Phone: (312) 835–3903, e-mail: *David.Blackmore@dot.gov*), to discuss the prospective idea, its potential responsiveness to the solicitation, and potential for FRA interest. Taking this action could forestall costly efforts by interested parties whose proposed work may not be of interest to FRA under this grant. Non-technical inquiries should be directed to the Grants Officer, Ms. Jennifer Capps (Phone: (202) 493–0112, e-mail: *Jennifer.Capps@dot.gov*).

SUPPLEMENTARY INFORMATION:

Authority and Funding: The Railroad Safety Technology Program (RSTP) authorized under section 105 of the RSIA (Division A, Pub. L. 110–432) (49 U.S.C. 20158), authorizes the appropriation of $50 million annually for fiscal years (FY) 2009 through 2013. The Transportation, Housing and Urban Development, and Related Agencies Appropriations Act of 2010 provided $50 million for this purpose.

Eligible Organizations: Title 49 U.S.C. 20158 provides that "Grants shall be made under this section to eligible passenger and freight railroad carriers, railroad suppliers, and State and local governments for projects * * * that have a public benefit of improved safety and network efficiency."

To be eligible for assistance, entities must have either received approval of the Technology Implementation Plans (TIP) and Positive Train Control Implementation Plans (PTCIP) required by 49 U.S.C. 20156(e)(2) and 20157, or demonstrate to the satisfaction of FRA that they are currently developing the required plans. Preference will be given in the following order:

1. Entities that have completed and received FRA approval of both their TIP and PTCIP.

2. Entities that have completed and received FRA approval of their PTCIP.

3. Entities that have submitted their PTCIP to FRA for approval.

4. Entities that have certified to FRA progress towards completion of their PTCIP and TIP.

5. All other entities.

Collaborative project submissions by freight and passenger carriers, suppliers, and State and local governments on eligible projects will be evaluated more favorably.

Eligible Projects: Grant awards will focus on using technologies or methods that are ready for deployment, or of sufficient technical maturity that they can be made ready for deployment within the 24 months of the grant award. FRA will give preference to collaborative projects by multiple railroads that have active railroad carrier and sponsoring public authority participation in the following order:

Priority 1: Projects that:

(a) Support the resolution of Northeast Corridor Positive Train Control (PTC) interoperability issues,

(b) Support the resolution of mixed freight and passenger PTC interoperability issues in the Los Angeles Basin, or

(c) Facilitate sharing of PTC communications infrastructure and spectrum.

Priority 2: Projects that:

(a) Support high-speed passenger operations using general freight PTC technologies,

(b) Optimize PTC deployment on the core 2015 PTC territory, or

(c) Support PTC deployment on non-2015 core PTC territory.

Priority 3: All other projects.

Selection Criteria: Applications will be evaluated and ranked based on both technical and cost/price factors.

Technical Factors (75% overall weighting):

1. Responsiveness to Solicitation Intent and Requirements (20%): Degree to which proposal meets the conceptual intent and submission requirements of the solicitation.

2. Significance for Implementing Interoperable PTC Deployment and Fit with FRA Mission (30%): Degree to which successful implementation of proposed idea would make interoperable PTC deployment more technically or economically practical (includes contribution to cost effectiveness, reliability, safety, availability, or maintainability), and fit within FRA's primary mission of ensuring the safety of the Nation's approximately 700 railroads.

3. Technical Merit (20%): Degree to which proposed ideas exhibit a sound

scientific and engineering basis; how well the proposed ideas could be practically applied in, and would be compatible with, the railroad environment; and perceived likelihood of technical and practical success.

4. Key Personnel and Supporting Organization (15%): The technical qualifications and demonstrated experience of key personnel proposed to lead and perform the technical efforts; qualifications of primary and supporting organizations to fully and successfully execute proposal plan within proposed timeframe and budget.

5. Collaborative Efforts (15%): The degree to which proposed effort is supported by multiple entities and the applicability and availability of results to the larger railroad industry.

Cost/Price Factor (25% overall weighting):

1. Affordability and degree to which proposed effort appears to be a good value for the amount of funding requested. This includes the reasonableness and realism of the proposed costs (60%).

2. The extent of proposed cost sharing or cost participation under the proposed effort (exclusive of the applicant's prior investment) (40%).

All evaluation factors other than cost or price, when combined, are significantly more important than cost or price alone. Technical evaluation is appreciably more important than cost or price and, as such, greater consideration shall be given to technical excellence rather than cost or price alone. An offer must be found acceptable under all applicable evaluation factors to be considered eligible for award. Awards will be made to responsible applicants whose offers provide the best value to the Government in terms of technical excellence, cost or price, and performance risk to include consistency and accord with the objectives of the solicitation and FRA's expressed areas of interest.

Requirements and Conditions for Grant Applications: Detailed application requirements and conditions may be found in the grant application guidance (RSS–RSTG–FY2010–1) for this solicitation on Grants.gov.

Information Collection: The Office of Management and Budget (OMB), under emergency clearance procedures, has approved the information collection associated with the Rail Safety Technology Program for 6 months. The approval number for this collection of information is OMB No. 2130–0587, and the expiration date is September 30, 2010. FRA will be publishing a Notice in the **Federal Register** shortly in which the agency will be seeking regular OMB Clearance for this collection of information. Such approvals are normally good for 3 years. FRA will publish a Notice for this second OMB approval once it is obtained.

Issued in Washington, DC, on March 23, 2010.

Brenda Moscoso,

Acting Associate Administrator for Railroad Safety/Chief Safety Officer.

[FR Doc. 2010–6889 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA–2010–0097]

Pipeline Safety: Workshop on Guidelines for Integrity Assessment of Cased Pipe

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of workshop.

SUMMARY: PHMSA is holding a workshop on the integrity assessment of cased pipe for pipelines subject to integrity management program requirements. The workshop is intended to discuss PHMSA's recently issued guidance "Guidelines for Integrity Assessment of Cased Pipe in Gas Transmission Pipelines" and related Frequently Asked Questions (FAQs). The latest guidelines and FAQs are available online at: *http://primis.phmsa.dot.gov/gasimp/documents.htm.* The workshop focus will be for the public, pipeline operators, trade associations, and others to address ideas and concerns with using External Corrosion Direct Assessment integrity evaluation methods and use of other technologies to assess pipelines in casings located within high consequence areas.

The workshop will be held at the Sheraton Inner Harbor, 300 South Charles Street, Baltimore, MD 21201 on April 28, 2010.

ADDRESSES: The April 28, 2010, cased pipe workshop will be held at the Sheraton Inner Harbor, 300 South Charles Street, Baltimore, MD 21201. The meeting room will be posted at the hotel on the day of the workshop.

FOR FURTHER INFORMATION CONTACT: Max Kieba at (202) 493–0595, or by e-mail at *max.kieba@dot.gov.*

SUPPLEMENTARY INFORMATION:

Registration: Members of the public may attend this free workshop. The workshop will not be webcast. Hotel reservations under the "U.S. Department of Transportation" room block for the night of April 27, 2010, can be made by contacting the hotel directly at 1–800–325–3535. A daily base rate of $161.00 is available for the night of April 27, 2010. For this rate, room reservations must be made by April 13, 2010.

To help assure that adequate space is provided, all attendees are encouraged to register for the workshop at: *https://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=64.* Name badge pick-up and on-site registration will be available starting at 7:30 a.m. with the workshop taking place from 8:30 a.m. until approximately 5 p.m. Refer to the meeting Web site for updated agenda and times at *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=64.* All workshop presentations will be available on the meeting Web site within 30 days following the workshop.

Comments: Members of the public may also submit written comments, either before or after the workshop. Comments should reference Docket ID PHMSA–2010–0097. Comments may be submitted in the following ways:

- *E-Gov Web Site: http://www.regulations.gov.* This site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management System, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* DOT Docket Management System, Room W12–140, on the ground floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: Identify the Docket ID at the beginning of your comments. If you submit your comments by mail, please submit two copies. If you wish to receive confirmation that PHMSA has received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov.* **Note:** Comments will be posted without changes or edits to *http://www.regulations.gov* including any personal information provided. Please see the Privacy Act heading in the Regulatory Analyses and Notices section of the **SUPPLEMENTARY INFORMATION** for additional information.

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement in the

Federal Register published on April 11, 2000 (65 FR 19477).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, please contact Max Kieba at (202) 493–0595, or by e-mail at *max.kieba@dot.gov* by April 15, 2010.

Issue Description: Under section 14 of the Pipeline Safety and Improvement Act of 2002 (Pub. L. 107–355) and the regulations issued thereunder, all gas transmission pipelines located in areas that could affect high consequence areas (HCAs) must have an integrity management program (IMP). One aspect of an integrity management program is that each operator of a gas transmission pipeline located in an area that could affect a HCA must conduct an integrity assessment by an approved method no later than December 17, 2012, and must periodically reassess the pipeline at least every seven years thereafter.

In response to Congressional mandates, PHMSA promulgated integrity management regulations to implement this and other IMP requirements now contained in 49 CFR 192, Subpart O. These regulations requiring assessments apply to all pipe in a HCA, including cased pipe.

Operators reported that they were encountering technical challenges in conducting External Corrosion Direct Assessment (ECDA) on cased pipe and industry requested more detailed guidance from PHMSA. PHMSA responded by committing to hold a workshop to address the issues and to follow up with stakeholders to help address the challenges cased crossing pose. That workshop was held in July 2008 (*http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=64*).

Following the workshop, PHMSA worked with a group of state regulators, representatives from industry, trade associations, and other stakeholders to develop guidelines for performing ECDA of gas transmission pipe inside casings (*http://primis.phmsa.dot.gov/gasimp/ccCASQAT.htm*). These guidelines are intended to assist pipeline operators in complying with 49 CFR 192, Subpart O for cased pipe in HCAs. The guidelines incorporate some of the input developed by this work group, but have been updated in some areas to conform to the integrity management regulations and statutory requirements.

The guidelines and FAQs are largely based on the work of this group and state regulators, and provide guidelines for pipeline operators to consider when implementing integrity management requirements for cased pipe. The casing guidelines should assist operators in cases where other integrity methods are not viable due to the pipeline being unpiggable for reasons such as lateral location and customer outage requirements.

Preliminary Workshop Agenda

The April 28, 2010 workshop will include:

(1) Briefing on the Guidelines for Integrity Assessment of Cased Pipe.

(2) Briefing on FAQs.

(3) Comments from Stakeholders.

(4) Question and Answer Forum.

Refer to the meeting Web site for a more detailed agenda: *http://primis.phmsa.dot.gov/meetings/MtgHome.mtg?mtg=64.* PHMSA encourages all interested persons to attend.

Issued in Washington, DC, on March 24, 2010.

Steven Fischer,

Director, Program Development.

[FR Doc. 2010–7028 Filed 3–26–10; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 23, 2010.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2010 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0059.

Type of Review: Extension.

Title: Usual and Customary Business Records Relating to Tax-Free Alcohol (TTB REC 5150/3).

Description: Tax-free alcohol is used for non-beverage purposes by educational organizations, hospitals, laboratories, etc. These records maintain accountability of spirits and protect tax revenue and public safety.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0061.

Type of Review: Revision.

Title: Letterhead Applications and Notices Relating to Denatured Spirits (TTB REC 5150/2).

Description: Denatured spirits are used for non-beverage industrial purposes in the manufacture of personal and household products. Permits, applications, and notices control the authorized uses and flow of denatured spirits, and protect the tax revenue and public safety.

Respondents: State, Local, and Tribal Governments.

Estimated Total Burden Hours: 1,890 hours.

OMB Number: 1513–0071.

Type of Review: Extension.

Title: Tobacco Products Importer or Manufacturer—Records of Large Cigar Wholesale Prices (TTB REC 5230/1).

Description: Because the tax on large cigars is based on the sales price, these records are needed to verify that the correct tax has been determined by the manufacturer or importer.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 1,906 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005.

OMB Reviewer: Shagufta Ahmed (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–6819 Filed 3–26–10; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 23, 2010.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be

addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, and 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2010 to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0035.

Type of Review: Extension.

Title: Assignment Form.

Description: This form is used when an award holder wants to assign or transfer all or part of his/her award to another person. When this occurs, the award holder forfeits all future rights to the portion assigned.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 75 hours.

Clearance Officer: Wesley Powe (202) 874–7662, Financial Management Service, Room 135. 3700 East West Highway, Hyattsville, MD 20782.

OMB Reviewer: OMB Reviewer: OIRA Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *oira_submission@omb.eop.gov.*

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. 2010–6821 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–208299–90]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final notice of proposed rulemaking, REG–208299–90, Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation (§§ 1.475(g)–2, 1.482–8, and 1.863–3).

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation and Sourcing of Income and Deductions Among Taxpayers Engaged in a Global Dealing Operation.

OMB Number: 1545–1599.

Regulation Project Number: REG–208299–90.

Abstract: This regulation provides rules for the allocation among controlled taxpayers and sourcing of income, deductions, gains and losses from a global dealing operation. The information requested in §§ 1.475(g)–2(b), 1.482–8(b)(3), (c)(3), (e)(3), (e)(5), (e)(6), (d)(3), and 1.863–3(h) is necessary for the Service we determine whether the taxpayer has entered into controlled transactions at an arm's length price.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 20,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6841 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–105170–97 and REG–112991–01]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulations, REG–105170–97 (TD 8930) and REG–112991–01 (TD 9104), Credit for Increasing Research Activities (§ 1.41–8(b)).

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution

Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Credit for Increasing Research Activities.

OMB Number: 1545–1625.

Regulation Project Number: REG–105170–97 and REG–112991–01.

Abstract: These final regulations relate to the computation of the credit under section 41(c) and the definition of *qualified research* under section 41(d). These regulations are intended to provide (1) Guidance concerning the requirements necessary to qualify for the credit for increasing research activities, (2) guidance in computing the credit for increasing research activities, and (3) rules for electing and revoking the election of the alternative incremental credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 5.

Estimated Time per Respondent: 50 hours.

Estimated Total Annual Burden Hours: 250.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6852 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8868.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8868, Application for Extension of Time To File an Exempt Organization Return.

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Elaine Christophe, (202) 622–3179, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington DC 20224, or through the Internet, at *Elaine.H.Christophe@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Application for Extension of Time To File an Exempt Organization Return.

OMB Number: 1545–1709.

Form Number: 8868.

Abstract: Sections 6081 and 1.6081 of the Internal Revenue Code and regulations permit the Internal Revenue Service to grant a reasonable extension of time to file a return. Form 8868 provides the necessary information for a taxpayer to apply for an extension to file a fiduciary or certain exempt organization return.

Current Actions: There are changes being made to the form at this time: Form codes are assigned to return type in lieu of checkboxes; option to file electronically for an extension of time is explained; requirement to mail paper format for specific forms is specified; sentences that are no longer applicable are being deleted. The cumulative changes to this form will reduce taxpayer burden.

Type of Review: Revision to this current collection.

Affected Public: Not-for-profit institutions.

Estimated Number of Respondents: 248,932.

Estimated Time per Respondent: 10 hrs., 24 mins.

Estimated Total Annual Burden Hours: 1,291,498.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 12, 2010.

R. Joseph Durbala,

IRS Tax Supervisory Analyst.

[FR Doc. 2010–6854 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 12815

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 12815, Return Post Card for the Community Based Outlet Participants.

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return Post Card for the Community Based Outlet Participants.

OMB Number: 1545–1703.

Form Number: 12815.

Abstract: This post card is used by the Community Based Outlet Program (CBOP) participants (*i.e.* grocery stores/pharmacies, copy centers, corporations, credit unions, city/country governments) to order products. The post card will be returned to the Western Area Distribution Center for processing.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 10,000.

Estimated Time per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 834.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6857 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8865

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.

DATES: Written comments should be received on or before *May 28, 2010* to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

OMB Number: 1545–1668.

Form Number: 8865.

Abstract: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes: (1) Expanded Code section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded Code section 6038 to require certain U.S. partners of controlled foreign partnerships to report information about the partnerships, and (3) modified the reporting required under Code section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 is used by U.S. persons to fulfill their reporting obligations under Code sections 6038B, 6038, and 6046A.

Current Actions: There are no change being made to form 8865 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 3,300.

Estimated Time per Respondent: 89 hours, 44 minute.

Estimated Total Annual Burden Hours: 296,124.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material

in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6858 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–20

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–20, Certification for No Information Reporting on the Sale of a Principal Residence.

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Certification for No Information Reporting on the Sale of a Principal Residence.

OMB Number: 1545–1592.

Revenue Procedure Number: Revenue Procedure 98–20.

Abstract: This revenue procedure sets forth the acceptable form of the written assurances (certification) that a real estate reporting person must obtain from the seller of a principal residence to except such sale or exchange from the information reporting requirements for real estate transactions under section 6045(e)(5) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and business or other for-profit organizations.

Estimated Number of Respondents: 2,300,000.

Estimated Time per Respondent: 10 minutes.

Estimated Total Annual Burden Hours for Respondents: 383,000.

Estimated Number of Recordkeepers: 90,000.

Estimated Time per Recordkeeeper: 25 minutes.

Estimated Total Annual Burden Hours for Recordkeepers: 37,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6839 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–19

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–19, Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Exceptions to the notice and reporting requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

OMB Number: 1545–1589.

Revenue Procedure Number: Revenue Procedure 98–19.

Abstract: Revenue Procedure 98–19 provides guidance to organizations exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of section 6033(e)(1) and the tax imposed by section 6033(e)(2).

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, not-for-profit institutions and farms.

Estimated Number of Organizations: 15,000.

Estimated Average Time per Organizations: 10 hours.

Estimated Total Annual Recordkeeping Hours: 150,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6835 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 98–25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 98–25, Automatic Data Processing.

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the revenue procedure should be directed to Allan Hopkins at (202) 622–6665, or at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Automatic Data Processing.

OMB Number: 1545–1595.

Revenue Procedure Number: Revenue Procedure 98–25.

Abstract: Revenue Procedure 98–25 provides taxpayers with comprehensive guidance on requirements for keeping and providing IRS access to electronic tax records. The revenue procedure requires taxpayers to retain electronic, or "machine-sensible" records, "so long as their contents may become material to the administration of the internal revenue laws." Such materiality would continue, according to IRS, at least until the period of limitations, including extensions, expires for each tax year.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms, Federal government, and State, local or Tribal governments.

Estimated Number of Respondents: 3,000.

Estimated Time per Respondent: 40 hours.

Estimated Total Annual Burden Hours: 120,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 10, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6840 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–108639–99; NOTICE 2000–3]

Proposed Collection; Comment Request for Qualified Retirement Plans Under Sections 401(k) and 401(m) and Guidance on Cash or Deferred Arrangements

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning REG–108639–99 (NPRM) Sections 401(k) and 401(m); Notice 2000–3 Guidance on Cash or Deferred Arrangements.

DATES: Written comments should be received on or before May 28, 2010 to be assured of consideration.

ADDRESSES: Direct all written comments to R. Joseph Durbala, Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Allan Hopkins at Internal Revenue Service, Room 6129, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–6665, or through the Internet at *Allan.M.Hopkins@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: REG–108639–99 (NPRM) Sections 401(k) and 401(m); Notice 2000–3 Guidance on Cash or Deferred Arrangements.

OMB Number: 1545–1669.

Regulation/Notice Number: REG–108639–99/Notice 2000–3.

Abstract: The final regulations provide guidance for qualified retirement plans containing cash or deferred arrangements under section 401(k) and providing matching contributions or employee contributions under section 401(m). The IRS needs this information to insure compliance with sections 401(k) and 401(m).

Current Actions: There are no changes being made to this regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Estimated Number of Respondents: 22,500.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 26,500.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 4, 2010.

R. Joseph Durbala,

Supervisory Tax Analyst.

[FR Doc. 2010–6856 Filed 3–26–10; 8:45 am]

BILLING CODE 4830–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Proposed Collection, Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Proposed Collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Mark Winter, Tennessee Valley Authority, 1101 Market Street (MP–3C), Chattanooga, Tennessee 37402–2801; (423) 751–6004.

Comments should be sent to the Agency Clearance Officer no later than*May 28, 2010.*

SUPPLEMENTARY INFORMATION:

Type of Request: Reauthorization.

Title of Information Collection: Section 26a Permit Application.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, farms, businesses, or other for-profit Federal agencies or employees, non-profit institutions, small businesses or organizations.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 4000.

Estimated Total Annual Burden Hours: 8000.

Estimated Average Burden Hours per Response: 2.0.

Need for and Use of Information: TVA Land Management activities and Section 26a of the Tennessee Valley Authority Act of 1933, as amended, require TVA to collect information relevant to projects that will impact TVA land and land rights and review and approve plans for the construction, operation, and maintenance of any dam, appurtenant works, or other obstruction affecting navigation, flood control, or public lands or reservations across, along, or in the Tennessee River or any of its tributaries. The information is collected via paper forms and/or electronic submissions and is used to assess the impact of the proposed project on TVA land or land rights and statutory TVA programs to determine if the project can be approved. Rules for implementation of TVA's Section 26a responsibilities are published in 18 CFR part 1304.

James W. Sample,

Director of CyberSecurity.

[FR Doc. 2010–6904 Filed 3–26–10; 8:45 am]

BILLING CODE 8120–08–P

U.S.-CHINA ECONOMIC AND SECURITY REVIEW COMMISSION

Notice of Open Public Hearing

AGENCY: U.S.-China Economic and Security Review Commission.

ACTION: Notice of open public hearing—March 18, 2010, Washington, DC.

SUMMARY: Notice is hereby given of the following hearing of the U.S.-China Economic and Security Review Commission.

Name: Daniel M. Slane, Chairman of the U.S.-China Economic and Security Review Commission.

The Commission is mandated by Congress to investigate, assess, and report to Congress annually on "the national security implications of the economic relationship between the United States and the People's Republic of China."

Pursuant to this mandate, the Commission will hold a public hearing in Washington, DC, on March 18, 2010, to address "Taiwan-China: Recent Economic, Political, and Military Developments across the Strait, and Implications for the United States."

Background

This is the third public hearing the Commission will hold during its 2010 report cycle to collect input from leading academic, industry, and government experts on national security implications of the U.S. bilateral trade and economic relationship with China. The March 18 hearing will examine the current situation and recent trends in the cross-Strait relationship from a security, economic, and political perspective, and what recent and future changes may mean for U.S. national interests in the region. The March 18 hearing will be Co-chaired by Commissioners Patrick A. Mulloy and Larry M. Wortzel.

Any interested party may file a written statement by March 18, 2010, by mailing to the contact below. On March 18, the hearing will be held in two sessions, one in the morning and one in the afternoon. A portion of each panel will include a question and answer period between the Commissioners and the witnesses.

Transcripts of past Commission public hearings may be obtained from the USCC Web site *http://www.uscc.gov.*

Date and Time: Thursday, March 18, 2010, 8:45 a.m. to 4 p.m. Eastern Standard Time. A detailed agenda for the hearing will be posted to the Commission's Web site at *http://www.uscc.gov* as soon as available.

ADDRESSES: The hearing will be held on Capitol Hill in Room 562 of the Dirksen Senate Office Building located at First Street and Constitution Avenue, NE., Washington, DC 20510. Public seating is limited to about 50 people on a first come, first served basis. Advance reservations are not required.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the hearing should contact Kathy Michels, Associate Director for the U.S.-China Economic and Security Review Commission, 444 North Capitol Street, NW., Suite 602, Washington, DC 20001; phone: 202–624–1409, or via e-mail at *kmichels@uscc.gov.*

Authority: Congress created the U.S.-China Economic and Security Review Commission in 2000 in the National Defense Authorization Act (Pub. L. 106–398), as amended by Division P of the Consolidated Appropriations Resolution, 2003 (Pub. L. 108–7), as amended by Public Law 109–108 (November 22, 2005).

Dated: March 1, 2010.

Kathleen J. Michels,

Associate Director, U.S.-China Economic and Security Review Commission.

[FR Doc. 2010–6834 Filed 3–26–10; 8:45 am]

BILLING CODE 1137–00–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0222]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to obtain a government headstone, grave marker or medallion.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: mechelle.powell@va.gov.* Please refer to "OMB Control No. 2900–0222" in any correspondence. During the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 501–1960 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Application for Standard Government Headstone or Marker for Installation in a Private or State Veterans' Cemetery, VA Form 40–1330.

b. Claim for Government Medallion for Installation in a Private Cemetery, VA Form 40–1330M.

OMB Control Number: 2900–0222.

Type of Review: Revision of a currently approved collection.

Abstracts:

a. The next of kin or other responsible parties of deceased veterans complete VA Form 40–1330 to apply for Government provided headstones or markers for unmarked graves.

b. A family member complete VA Form 40–1330M to apply for a Government medallion to be affixed to privately purchased headstone or marker for a deceased veteran buried in a private cemetery.

Affected Public: Individuals or Households.

Estimated Annual Burden: 93,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 374,000.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–6843 Filed 3–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0300]

Proposed Information Collection (Veterans Application for Assistance in Acquiring Special Housing Adaptations) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to assist disabled veterans in acquiring special housing and/or adaptations to their current resident.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2010.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *nancy.kessinger@va.gov.* Please refer to "OMB Control No. 2900–0300" in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Application for Assistance in Acquiring Special Housing Adaptations, VA Form 26–4555d.

OMB Control Number: 2900–0300.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans who are disabled complete VA Form 26–4555d to apply for special housing or modification to their current dwelling. Grants are available to assist the veteran in making adaptations to their current residences or one they intend to live in as long as the veteran or a member of the veteran's family owns the home.

Affected Public: Individuals or households.

Estimated Annual Burden: 25 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 75.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–6842 Filed 3–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0365]

Proposed Information Collection (Request for Disinterment) Activity: Comment Request

AGENCY: National Cemetery Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The National Cemetery Administration (NCA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant entitlement to disinter the remains of a loved one from or within a national cemetery.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 28, 2010.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *http://www.Regulations.gov;* or to Mechelle Powell, National Cemetery Administration (40D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; or *e-mail: mechelle.powell@va.gov.* Please refer to "OMB Control No. 2900–0365" in any correspondence. During the comment period, comments may be viewed online through *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mechelle Powell at (202) 426–4114 or FAX (202) 273–6695.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, NCA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of NCA's functions, including whether the

information will have practical utility; (2) the accuracy of NCA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Disinterment, VA Form 40–4970.

OMB Control Number: 2900–0365.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 40–4970 to request removal of remains from a national cemetery for interment at another location. Interments made in national cemeteries are permanent and final. All immediate family members of the decedent, including the person who initiated the interment, (whether or not he/she is a member of the immediate family) must provide a written consent before disinterment is granted. VA will accept an order from a court of local jurisdiction in lieu of VA Form 40–4970.

Affected Public: Individuals or households.

Estimated Annual Burden: 55.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 329.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Enterprise Records Service.

[FR Doc. 2010–6844 Filed 3–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0616]

Agency Information Collection (Application for Furnishing Long-Term Care Services to Beneficiaries of Veterans Affairs, and Residential Care Home Program) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 28, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0616" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0616."

SUPPLEMENTARY INFORMATION:

Titles:

a. Application for Furnishing Long-Term Care Services to Beneficiaries of Veterans Affairs, VA Form 10–1170.

b. Residential Care Home Program—Sponsor Application, VA Form 10–2407.

OMB Control Number: 2900–0616.

Type of Review: Extension of a currently approved collection.

Abstracts:

a. VA Form 10–1170 is completed by community agencies wishing to provide long term care to veterans receiving VA benefits.

b. VA Form 10–2407 is an application used by a residential care facility or home that wishes to provide residential home care to veterans. It serves as the agreement between VA and the residential care home that the home will submit to an initial inspection and comply with VA requirements for residential care.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2010, at pages 2595–2596.

Affected Public: Business or other for-profit.

Estimated Annual Burden:

a. VA Form 10–1170—83 hours.

b. VA Form 10–2407—42 hours.

Estimated Average Burden per Respondent:

a. VA Form 10–1170—10 minutes.

b. VA Form 10–2407—5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents:

a. VA Form 10–1170—500.

b. VA Form 10–2407—500.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–6845 Filed 3–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (CPEP)]

Agency Information Collection (Compensation and Pension Examination Program (CPEP)) Activities under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATE: Comments must be submitted on or before April 26, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (CPEP)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (CPEP)."

SUPPLEMENTARY INFORMATION:

Title: Compensation and Pension Examination Program (CPEP) Veterans Satisfaction Survey, VA Form 10–0480.

Type of Review: New collection.

Abstract: The survey will be used to gather feedback from Veterans regarding

their experience at individual CPEP examination sites. VA will use the data collected to determine where and to what extent services are satisfactory or where improvement is needed.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2010, at page 2594.

Affected Public: Individuals or households.

Estimated Annual Burden: 153.

Estimated Average Burden per Respondent: 5.7 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1,614.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–6846 Filed 3–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (CCHT)]

Agency Information Collection (Care Coordination Home Telehealth (CCHT)) Activity Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 28, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–New (CCHT)" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–New (CCHT)."

SUPPLEMENTARY INFORMATION:

Title: Care Coordination Home Telehealth (CCHT) Patient Satisfaction Survey, VA Form 10–0481.

OMB Control Number: 2900–New (CCHT).

Type of Review: New collection.

Abstract: Patients enrolled in the CCHT program will receive survey questions through a messaging device located in their home. Patients can select an answer by the use of buttons, a touch screen application or electronically spoken to them through an Interactive Voice Response if they are visually impaired.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2010, on page 2595.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 1,640 hours.

Estimated Average Burden per Respondent—1.5 minutes.

Frequency of Response: Quarterly.

Estimated Number of Respondents: 16,400.

Estimated Number of Responses: 65,600.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–6847 Filed 3–26–10; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0700]

Agency Information Collection (Service-Disabled Veterans Insurance—Waiver of Premiums) Activities: Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 28, 2010.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to "OMB Control No. 2900–0700" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, fax (202) 273–0443 or e-mail *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0700."

SUPPLEMENTARY INFORMATION:

Title: Service-Disabled Veterans Insurance—Waiver of Premiums, VA Form 29–0812.

OMB Control Number: 2900–0700.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants who become totally disabled complete VA Form 29–0812 to apply for a waiver of their Service-Disabled Veterans Insurance policy premiums.

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 **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 15, 2010, at pages 2593–2594.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,500.

Dated: March 22, 2010.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2010–6848 Filed 3–26–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Disability Compensation; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Disability Compensation will meet on April 19–20, 2010, at the St. Regis Washington DC, 923 16th and K Streets, NW., from 8:30 a.m. to 5 p.m. each day. The meeting will be held in the Chandelier Ballroom. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the maintenance and periodic readjustment of the VA Schedule for Rating Disabilities. The Committee is to assemble and review relevant information relating to the nature and character of disabilities arising from service in the Armed Forces, provide an ongoing assessment of the effectiveness of the rating schedule and give advice on the most appropriate means of responding to the needs of veterans relating to disability compensation.

On both days, the Committee will receive briefings on issues related to compensation for Veterans with service-connected disabilities and other Veteran benefits programs. Time will be allocated for receiving public comments on the afternoon of April 19. Public comments will be limited to three minutes each. Individuals wishing to make oral statements before the Committee will be accommodated on a first-come, first-served basis. Individuals who speak are invited to submit 1–2 page summaries of their comments at the time of the meeting for inclusion in the official meeting record.

The public may submit written statements for the Committee's review to Ms. Ersie Farber, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (211A), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting or seeking additional information should contact Ms. Farber at (202) 461–9728 or *Ersie.farber@va.gov*.

Dated: March 23, 2010.

By Direction of the Secretary.

Vivian Drake,

Acting Committee Management Officer.

[FR Doc. 2010–6782 Filed 3–26–10; 8:45 am]

BILLING CODE P

Federal Register

Monday,
March 29, 2010

Part II

Environmental Protection Agency

National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment and/or Information on Related Issues; Notice

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0747; FRL–9130–3]

RIN 2040–AE90

National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment and/or Information on Related Issues

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for comments.

SUMMARY: The Safe Drinking Water Act (SDWA) requires the United States Environmental Protection Agency (EPA) to conduct a periodic review of existing National Primary Drinking Water Regulations (NPDWRs) and determine which, if any, need to be revised. The purpose of the review, called the Six-Year Review, is to identify those NPDWRs for which current health effects assessments, changes in technology, and/or other factors provide a health or technical basis to support a regulatory revision that will improve or strengthen public health protection. EPA has completed its detailed review of 71 NPDWRs and at this time believes that four NPDWRs are candidates for regulatory revision. These four NPDWRs are acrylamide, epichlorohydrin, tetrachloroethylene, and trichloroethylene. EPA requests public comment and/or relevant information that will assist the Agency as we move forward with regulatory action to revise these four NPDWRs. In addition to the 71 NPDWRs discussed in detail in today's action, this review also includes 14 other NPDWRs that need no detailed review because of recent or ongoing revision actions.

DATES: Comments must be received on or before May 28, 2010, 60 days after publication in the **Federal Register.**

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OW–2008–0747, by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center Public Reading Room, EPA Headquarters West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0747. 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 using *http://www.regulations.gov.* Please contact EPA prior to submitting CBI.

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 instructions on submitting comments, go to section I.B of this document.

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 Water 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 EPA Docket Center is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: For technical inquiries contact: Rajiv Khera, (202) 564–4881, or Karen Wirth, (202) 564–5246, Office of Ground Water and Drinking Water, Environmental Protection Agency. For general information about, and copies of, this document or information about the existing NPDWRs discussed in this action, contact the Safe Drinking Water Hotline. Callers within the United States may reach the Hotline at (800) 426–4791. The Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time.

Abbreviations and Acronyms Used in This Action

>—greater than
2,4-D—2,4-dichlorophenoxyacetic acid
µg/L—microgram per liter
AMG—Alternative Monitoring Guidelines
ASDWA—Association of State Drinking Water Administrators
ATSDR—Agency for Toxic Substances and Disease Registry
AWWA—American Water Works Association
BAT—best available technology
CARC—Cancer Assessment Review Committee
CBI—Confidential Business Information
CCL—Contaminant Candidate List
CFR—Code of Federal Regulations
Cr III—trivalent chromium
Cr VI—hexavalent chromium
CWS—community water system
DBPs—disinfection byproducts
DBCP—1,2-dibromo-3-chloropropane
DBPR—Disinfectants and Disinfection Byproducts Rule
DEHA—di(2-ethylhexyl)adipate
DEHP—di(2-ethylhexyl)phthalate
DWEL—drinking water equivalent level
EDB—ethylene dibromide
EPA—U.S. Environmental Protection Agency
EQL—estimated quantitation level
ESA—ethanesulfonic acid
FR—**Federal Register**
FQPA—Food Quality Protection Act
GAC—granular activated carbon
GWR—Ground Water Rule
HAA5—haloacetic acids
IARC—International Agency for Research on Cancer
ICR—Information Collection Request
IRED—Interim Reregistration Eligibility Decision
IRIS—Integrated Risk Information System
LCR—Lead and Copper Rule
LH—lutenizing hormone
LOAEL—lowest-observed-adverse-effect level
LT2ESWTR—Long-Term 2 Enhanced Surface Water Treatment Rule
MCL—maximum contaminant level
MCLG—maximum contaminant level goal
MDL—method detection limit
mg/kg-day—milligrams per kilogram of body weight per day
mg/L—milligrams per liter
MOA—mode of action
MRL—minimum reporting level
N—nitrogen
NAS—National Academy of Sciences

NAWQA—National Water Quality Assessment
NCFAP—National Center for Food and Agricultural Policy
NCOD—National Drinking Water Contaminant Occurrence Database
NDWAC—National Drinking Water Advisory Council
NELAC—National Environmental Laboratory Accreditation Conference
NOAEL—no-observed-adverse-effect level
NPDWR—National Primary Drinking Water Regulation
NRC—National Research Council
NTNCWS—non-transient, non-community water system
NTP—National Toxicology Program
OPP—Office of Pesticide Programs
ORD—Office of Research and Development
OW—Office of Water
PCBs—polychlorinated biphenyls
PCE—tetrachloroethylene
PE—Performance Evaluation
pCi/L—picoCurie per liter
PN—public notification
ppb—part per billion (*e.g.,* microgram per liter)
ppm—part per million (*e.g.,* milligram per liter)
PQL—practical quantitation limit
PT—Performance Testing
PTA—packed tower aeration
PWS—public water system
R2S2—Regulatory Review Support Spreadsheet
RED—Reregistration Eligibility Decision
RfD—reference dose
RSC—relative source contribution
SAB—Science Advisory Board
SSCT—Small System Compliance Technology
SDWA—Safe Drinking Water Act
SDWIS/FED—Safe Drinking Water Information System/Federal version
SMCL—secondary maximum contaminant level
SOC—synthetic organic chemical
STORET—STOrage and RETrieval data system
SWTR—Surface Water Treatment Rule
T3—triiodothyronine (thyroid hormone)
T4—levothyroxine (thyroid hormone)
TCDD—tetrachlorodibenzo-p-dioxin
TCE—trichloroethylene
TNCWS—transient, non-community water system
TP—trichlorophenoxypropionic acid
TRED—Interim Tolerance Reassessment and Risk Management Decisions
TRI—Toxics Release Inventory
TSC—Technical Support Center
TT—treatment technique
TTHM—total trihalomethanes
USDA—U.S. Department of Agriculture
UCMR 2—second Unregulated Contaminant Monitoring Rule
USGS—U.S. Geological Survey
VOC—volatile organic compound
WS—water supply

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32. Dinoseb
33. Diquat
34. Endothall
35. Endrin
36. Epichlorohydrin
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SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to My Public Water System?

This action itself does not impose any requirements on anyone. Instead, it notifies interested parties of EPA's review of existing NPDWRs and its conclusions about which of these warrants new regulatory action at this time. EPA requests public comment on the four NPDWRs identified as candidates for revision, with a specific focus on comments and/or relevant information that will inform the regulatory revisions.

B. How Should I Submit Comments on This Action?

Please *see* Section VII for the issues related to this notice for which EPA requests comment and/or information. EPA will accept written or electronic comments (please do not send both). Instructions for submitting comments are in the preceding section. EPA prefers electronic comments. No

facsimiles (faxes) will be accepted. Commenters who want EPA to acknowledge receipt of their comments should also send a self-addressed, stamped envelope.

The Agency intends to address the comments received on the four NPDWRs identified as candidates for revision in subsequent **Federal Register** notices proposing and finalizing the regulatory revisions, and in documents that will be made available in the docket for those notices.

C. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

- Explain your views as clearly as possible.
- Describe any assumptions that you used.
- Provide any technical information and/or data you used that support your views.
- If you estimate potential burden or costs, explain how you arrived at your estimate.
- Provide specific examples to illustrate your concerns.
- Offer alternatives.
- Make sure to submit your comments by the comment period deadline.
- To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

II. Statutory Requirements for the Six-Year Review

Under the SDWA, as amended in 1996, EPA must periodically review existing national primary drinking water regulations (NPDWRs) and, if appropriate, revise them. Section 1412(b)(9) of SDWA states:

> The Administrator shall, not less often than every 6 years, review and revise, as appropriate, each national primary drinking water regulation promulgated under this title. Any revision of a national primary drinking water regulation shall be promulgated in accordance with this section, except that each revision shall maintain, or provide for greater, protection of the health of persons.

Pursuant to the 1996 SDWA Amendments, EPA completed and published the results of its first Six-Year Review (Six-Year Review 1) July 18, 2003 (68 FR 42908, USEPA, 2003e) after developing a systematic approach, or protocol, for the review of NPDWRs. EPA has applied the same protocol with minor refinements (revised protocol) to the second Six-Year Review of NPDWRs (Six-Year Review 2). Section V of today's action describes the protocol and the minor refinements used for the Six-Year Review 2 and section VI describes the review findings for each of the NPDWRs covered by the current effort (*see* Table IV–1).

III. Stakeholder Involvement in the Six-Year Review Process

A. How Have Stakeholders Been Involved in the Review Process?

The Agency developed a Six-Year Review protocol during the first review cycle with extensive stakeholder inputs, including a stakeholder meeting, Agency presentations at a variety of meetings, and consultation with the National Drinking Water Advisory Council (NDWAC). NDWAC formed a working group to develop recommendations regarding the process the Agency should apply to conduct a periodic and systematic review of existing NPDWRs. The Working Group held two meetings and a conference call during June through September 2000 (67 FR 19030, April 17, 2002, USEPA, 2002c). The NDWAC approved the Working Group's recommendations in November 2000, and formally provided them to EPA in December 2000 (NDWAC, 2000). The NDWAC recommended that EPA's review include consideration of five key elements, as appropriate: health effects, analytical and treatment feasibility, implementation-related issues, occurrence and exposure, and economic impacts. As discussed in more detail in section V of today's action, EPA continues to follow the general protocol recommended by the NDWAC.

B. How Did EPA Incorporate Feedback From the Science Advisory Board's 2002 Comments on the Six-Year Review Protocol?

In June 2002 and during the Six-Year Review 1, EPA consulted with the Science Advisory Board (SAB) Drinking Water Committee and requested their review and comment on whether the protocol that EPA developed based on the NDWAC's recommendations was consistently applied and appropriately documented. The SAB provided verbal feedback regarding the transparency and clarity of EPA's criteria for making its Six-Year Review 1 decisions. At that time, EPA revised the protocol to better explain how the decision criteria were applied. For the Six-Year Review 2 and to increase transparency and clarity, EPA also developed a more detailed decision tree and an automated tool, called the Regulatory Review Support Spreadsheet (R2S2). The more detailed decision tree incorporates the sequential relationships between the various NPDWR review elements and R2S2 tracks each contaminant through the decision making process. The Agency has documented the decision tree and the automated tool in the document, "EPA Protocol for the Second Review of Existing National Primary Drinking Water Regulations (Updated)" (USEPA, 2009a).

IV. Regulations Included in the Six-Year Review

Table IV–1 lists all the NPDWRs established to date. The table also reports the maximum contaminant level goal (MCLG), which is "set at the level at which no known or anticipated adverse effects on the health of persons occur and which allows an adequate margin of safety" (SDWA section 1412(b)(4)), and the maximum contaminant level (MCL), which is the maximum permissible level of a contaminant in water delivered to any user of a public water system and "is as close to the maximum contaminant level goal as is feasible" (SDWA section 1412(b)(4)(B)), except for contaminants that have a treatment technique (TT) in lieu of an MCL because it is not "economically or technically feasible" to set an MCL (SDWA section 1412(b)(7)(A)).[1] Of these 85 NPDWRs, EPA has reviewed 14 as part of recent or ongoing regulatory actions and, as a result, they are not subject to a detailed review in today's notice. The review for the remaining 71 is discussed in detail in today's action.

[1] Under limited circumstances, SDWA Section 1412(b)(6)(A) also gives the Administrator the discretion to promulgate an MCL that is less stringent than the feasible level and that "maximizes health risk reduction benefits at a cost that is justified by the benefits."

TABLE IV–1—CONTAMINANTS WITH NPDWRS INCLUDED IN SIX-YEAR REVIEW 2

Contaminants	MCLG (mg/L) [1]	MCL (mg/L) [1]	Contaminants	MCLG (mg/L) [1]	MCL (mg/L) [1]
Acrylamide	0	TT	Epichlorohydrin	0	TT
Alachlor	0	0.002	Ethylbenzene	0.7	0.7
Alpha particles	0 (pCi/L)	15 (pCi/L)	Ethylene dibromide (EDB)	0	0.00005
Antimony	0.006	0.006	Fluoride	4	4
Arsenic	0	0.01	*Giardia lamblia*	0	TT
Asbestos	7 (million fibers/L)	7 (million fibers/L)	Glyphosate	0.7	0.7
Atrazine	0.003	0.003	Haloacetic acids (HAA5)	n/a [2]	0.06
Barium	2	2	Heptachlor	0	0.0004
Benzene	0	0.005	Heptachlor Epoxide	0	0.0002
Benzo(a)pyrene	0	0.0002	Hexachlorobenzene	0	0.001
Beryllium	0.004	0.004	Hexachlorocyclopentadiene	0.05	0.05
Beta particles	0 (millirems/yr)	4 (millirems/yr)	Lead	0	TT
Bromate	0	0.01	*Legionella*	0	TT
Cadmium	0.005	0.005	Lindane	0.0002	0.0002
Carbofuran	0.04	0.04	Mercury (Inorganic)	0.002	0.002
Carbon tetrachloride	0	0.005	Methoxychlor	0.04	0.04
Chloramines	4	4	Monochlorobenzene (Chlorobenzene).	0.1	0.1
Chlordane	0	0.002	Nitrate (as nitrogen, N)	10	10
Chlorine	4	4	Nitrite (as N)	1	1
Chlorine dioxide	0.8	0.8	Oxamyl (Vydate)	0.2	0.2
Chlorite	0.8	1	Pentachlorophenol	0	0.001
Chromium (total)	0.1	0.1	Picloram	0.5	0.5
Coliform	0% [3]	5% [3]	Polychlorinated biphenyls (PCBs).	0	0.0005
Copper	1.3	TT	Radium	0 (pCi/L)	5 (pCi/L)
Cryptosporidium	0	TT	Selenium	0.05	0.05
Cyanide	0.2	0.2	Simazine	0.004	0.004
2,4-Dichlorophenoxyacetic acid (2,4-D).	0.07	0.07	Styrene	0.1	0.1
Dalapon	0.2	0.2	2,3,7,8-Tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD or dioxin).	0	3.00E-08
Di(2-ethylhexyl)adipate (DEHA).	0.4	0.4	Tetrachloroethylene (PCE)	0	0.005
Di(2-ethylhexyl)phthalate (DEHP).	0	0.006	Thallium	0.0005	0.002
1,2-Dibromo-3-chloropropane (DBCP).	0	0.0002	Toluene	1	1
1,2-Dichlorobenzene (o-Dichlorobenzene).	0.6	0.6	Total trihalomethanes (TTHM).	n/a [4]	0.08
1,4-Dichlorobenzene (p-Dichlorobenzene).	0.075	0.075	Toxaphene	0	0.003
1,2-Dichloroethane (Ethylene dichloride).	0	0.005	2,4,5-Trichlorophenoxypropionic acid (2,4,5-TP or Silvex).	0.05	0.05
1,1-Dichloroethylene	0.007	0.007	1,2,4-Trichlorobenzene	0.07	0.07
cis-1,2-Dichloroethylene	0.07	0.07	1,1,1-Trichloroethane	0.2	0.2
trans-1,2-Dichloroethylene	0.1	0.1	1,1,2-Trichloroethane	0.003	0.005
Dichloromethane (Methylene chloride).	0	0.005	Trichloroethylene (TCE)	0	0.005
1,2-Dichloropropane	0	0.005	Uranium	0 (µg/L)	30 (µg/L)
Dinoseb	0.007	0.007	Vinyl chloride	0	0.002
Diquat	0.02	0.02	Viruses	0	TT
Endothall	0.1	0.1	Xylenes (total)	10	10
Endrin	0.002	0.002.			

1. Units are in milligrams per liter (mg/L) unless otherwise noted, *e.g.,* micrograms per liter (µg/L) and picoCuries per liter (pCi/L). Milligrams per liter are equivalent to parts per million (ppm) and micrograms per liter are equivalent to parts per billion (ppb).

2. There is no MCLG for all five haloacetic acids. MCLGs for some of the individual contaminants are: dichloroacetic acid (zero), trichloroacetic acid (0.02 mg/L), and monochloroacetic acid (0.07 mg/L). Bromoacetic acid and dibromoacetic acid are regulated with this group but have no MCLGs.

3. No more than 5.0% samples total coliform-positive in a month.

4. There is no MCLG for total trihalomethanes. MCLGs for some of the individual contaminants are: bromodichloromethane (zero), bromoform (zero), dibromochloromethane (0.06 mg/L), and chloroform (0.07mg/L).

V. EPA's Protocol for Reviewing the NPDWRs Included in This Action

A. What Was EPA's Review Process?

The protocol document, "EPA Protocol for the Review of Existing National Primary Drinking Water Regulations (Updated)" (USEPA, 2009a), contains a detailed description of the process the Agency used to review the NPDWRs discussed in today's action. EPA's primary goal was to identify and prioritize candidates for regulatory revision to target those revisions that are most likely to result in an increased level of public health protection and/or result in substantial cost savings for systems and their customers while maintaining the level of public health protection.[2] This section provides an overview of the review process and section V.B provides a more detailed description of how EPA applied the process to the review of the NPDWRs discussed in today's action.

EPA applied the following basic principles to the review process:

- The Agency sought to avoid redundant review efforts. Because EPA has reviewed information for 14 contaminants as part of recent or ongoing regulatory actions, they are not subject to the detailed review in today's notice.
- EPA evaluated the potential for new information to affect NPDWRs in a manner consistent with existing policies and procedures for developing NPDWRs. For example, in determining whether a possible change in analytical feasibility existed, the Agency considered the current policy and procedures for calculating the practical quantitation level for drinking water contaminants.[3]
- Because any possible change in an MCLG affects other NPDWR elements, EPA will not generally consider potential revisions to any contaminant with a health effects assessment in process that would not be completed during the review period, where either the contaminant's MCL is equal to its MCLG or the MCL is based on the 1996 SDWA Amendments' cost-benefit provision. The rationale for this outcome is that any new information from the health effects assessment could affect the MCL or the assessment of the benefits associated with the MCL for these contaminants. Therefore, the Agency does not believe it is appropriate to consider revisions to these NPDWRs while a health effects assessment is ongoing.
- For those contaminants with ongoing health assessments that have MCLGs equal to or greater than zero and MCLs limited by analytical feasibility or the standard is based on a Treatment Technique, EPA conducted a further review of the potential to revise the MCL or TT. The rationale for this approach is that the MCL or TT is based on technology limitations and therefore, EPA should consider whether there have been improvements in technology and whether any revision might provide a meaningful opportunity to improve or at least maintain public health protection. If EPA found that there were no changes in technology (*i.e.,* analytical feasibility or a TT) or if changes were possible but there was no meaningful opportunity to improve public health protection or reduce costs (while maintaining public health protection), these contaminants remained in the ongoing health effects assessment category.
- For this review, EPA considered new information from health effects assessments that were completed by a March 1, 2009 cutoff date. If an updated assessment is completed after the March 1, 2009 information cutoff date, then EPA will review the update and any new conclusions or additional information associated with the contaminant during the next review cycle or during the revision of an NPDWR (*e.g.,* acrylamide, PCE and TCE). If the health effects assessments are not completed in time for the regulatory revisions for acrylamide, PCE and TCE, EPA does not plan to change the existing MCLG of zero. EPA is currently considering how best to evaluate the benefits for these regulatory revisions if the EPA health effects assessments are not complete. One option would be to use the same health effects information that was used for promulgating the original regulation. Another option is to consider using other best available, peer-reviewed health risk assessments that are complete as the Agency is proceeding with the regulatory revisions. EPA requests comment on these options and any other options that the public considers appropriate to evaluate the benefits.
- The Agency may consider accelerating a review and potential revision for a particular NPDWR before the next review cycle when justified by new public health risk information.
- During the review, EPA identified areas where information is inadequate or unavailable (data gaps) or emerging and is needed to determine whether revision to an NPDWR is appropriate. When the Agency is able to fill such gaps or fully evaluate the emerging information, the Agency will consider it as part of the next review cycle. The Agency may consider accelerating a review and potential revision for a particular NPDWR if the information becomes available before the next review cycle and if review and a potential revision are justified by new public health risk information.
- EPA applied the Agency's peer review policy (USEPA, 2000d), where appropriate, to any new analyses.

During Six-Year Review 1, the Agency developed a systematic approach or protocol (USEPA, 2003b). The Agency based this protocol on the recommendations of the NDWAC, through internal Agency deliberations, and discussions with the diverse group of stakeholders involved in drinking water and its protection. The overview of the protocol in Figure V–1 shows the sequence of key decisions that led to EPA assigning each NPDWR to one of two major categories of outcomes in the Six-Year Review 2. The two major outcomes of the review are either: 1) The NPDWR is still appropriate and no action is necessary at this time, or 2) the NPDWR is a candidate for revision. The reasons for a Six-Year Review outcome of no further action at this time include at least one or more of the following reasons:

- The NPDWR has been reviewed or is being reviewed in a recent or ongoing action;
- The NPDWR has an ongoing health effects assessment (*i.e.,* for those

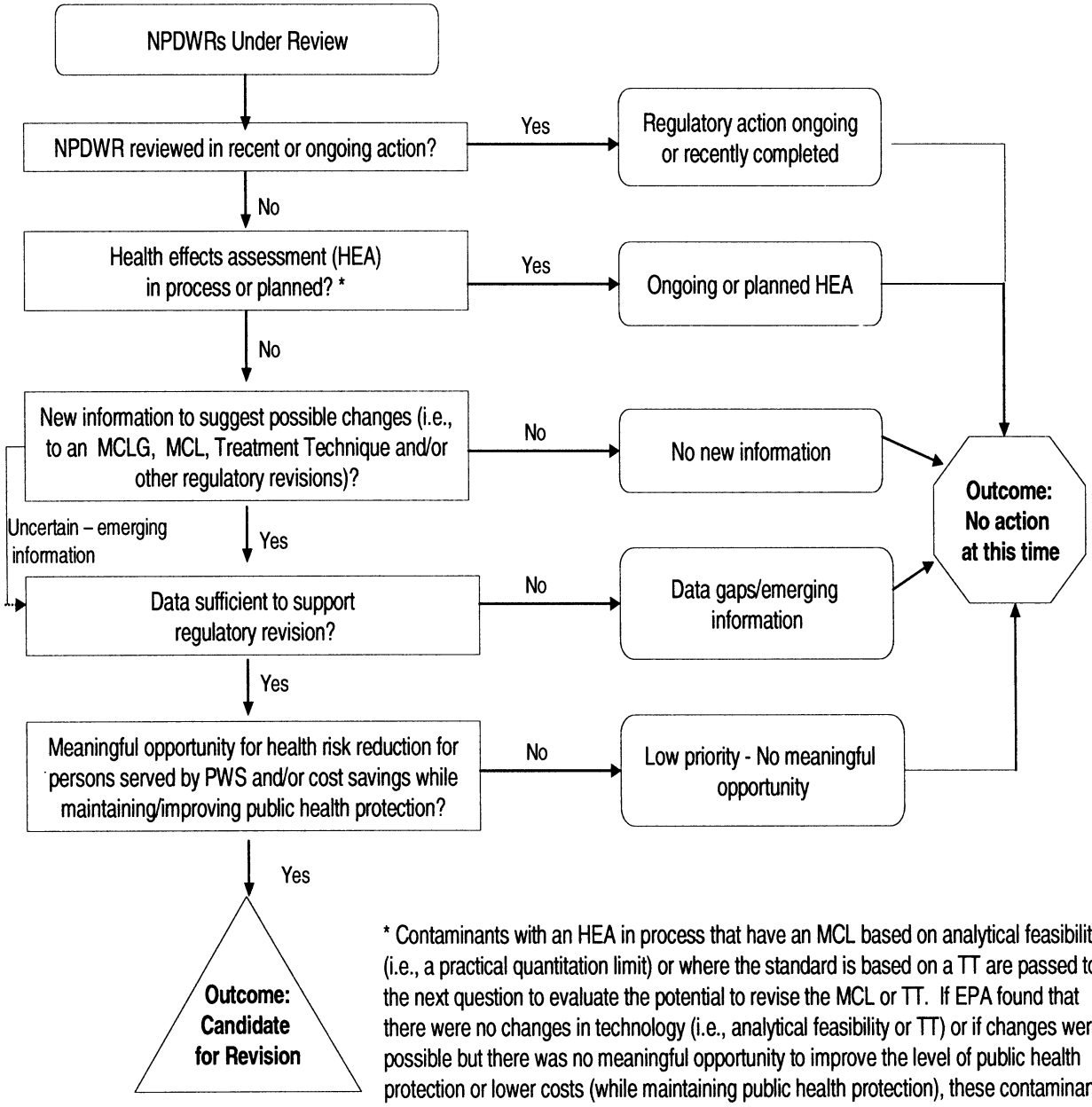
[2] Note that the legislative history of the 1996 SDWA Amendments indicate that Congress envisioned the possibility that a relaxed standard might be appropriate under circumstances that would not result in a lessening of the level of public health protection (*see* Senate Report Number 104–169, 104th Congress, 1st Session, 1995 at 38). In other words, an MCL could be relaxed (*i.e.,* increased) in cases where a revised health risk assessment leads to a less stringent (higher) MCLG than the existing MCL so that the level of health protection is maintained. There have been several instances in which revised health assessments have suggested higher MCLGs and the Agency could have considered relaxing the MCLs. In these instances and because SDWA allows EPA to determine when revisions are appropriate, the Agency decided that there would be a negligible gain in public health protection and/or cost savings and any revision would be a low priority activity because of competing workload priorities, the administrative costs associated with rulemaking, and the burden on States and the regulated community to implement any regulatory changes.

[3] The following **Federal Register** notices describe the process the Agency has used to determine analytical feasibility for drinking water contaminants: 50 FR 46880, November 13, 1985 (USEPA, 1985); 52 FR 25690, July 8, 1987 (USEPA, 1987); 54 FR 22062, May 22, 1989 (USEPA, 1989b). For this Six Year Review effort and to supplement the analytical feasibility evaluation, the Agency also reviewed extensive minimum reporting level (MRL) data obtained from States and primacy entities as part of the Six-Year Review information collection request (ICR) for SDWA compliance monitoring data.

NPDWRs with an MCL set at the MCLG or the MCL is based on the SDWA cost benefit provision);

- EPA is considering whether a new health effects assessment is needed;
- EPA did not identify any new, relevant information that indicate changes to the NPDWR;
- New information indicate a possible change to the MCLG and/or MCL but changes to the NPDWR are a low priority activity due to negligible gains in public health protection and/or cost savings; or
- There are data gaps or emerging information that needs to be evaluated.

Figure V-1. Six-Year Review Protocol Overview and Major Categories of Revise/Take No Action Outcomes



During the current Six-Year Review, the Agency assessed the protocol and determined it remained appropriate and suitable for the second review. The research requirements and decision-making process of the Six-Year Review 2 protocol are essentially the same as those implemented during Six-Year Review 1. The Agency made some minor refinements to enhance the Agency's effectiveness in applying the protocol to the review of NPDWRs. The

refinements that address SAB's comments about the clarity and the transparency of the protocol's decision making process are described in the next two paragraphs. Section V.B describes the key technical elements and any refinements in the data and/or the analysis methods used during Six-Year Review 2.

The primary refinement to the protocol during Six-Year Review 2 is the implementation of a more detailed "decision tree" than either the one used during Six-Year Review 1 (USEPA, 2003b) or the overview shown in Figure V–1. The protocol is broken down into a series of questions about whether there is new information for a contaminant that suggests potential to revise each of the NPDWR elements. These questions are logically ordered into a decision tree that incorporates the sequential relationships between the different NPDWR elements. For example, when EPA establishes an MCL, it must generally set the MCL as close to the MCLG as feasible. Consequently, for a contaminant that has an MCL equal to its MCLG, EPA must make decisions about the availability and adequacy of new information regarding the possibility to revise the MCLG before decisions regarding the possibility to revise the MCL. It also means that if there is no possibility to revise a contaminant's MCLG and the MCL is already equal to the MCLG, then there is no basis for revising the MCL. In this instance, the MCL branch of the decision tree is not reached, and it is not necessary to make related decisions such as whether the practical quantitation limit (PQL) can be revised. This approach results in a more efficient review process. EPA also developed an automated tool called the R2S2 that tracks each contaminant's movement through the decision tree, including the revise/take no action outcomes. This tool enhances transparency throughout the decision process. The automation also streamlines the decision process and facilitates the Agency's reporting of its review results. The Agency has documented the decision tree and the automated tool in the document entitled, "EPA Protocol for the Second Review of Existing National Primary Drinking Water Regulations (Updated)" (USEPA, 2009a).

B. How Did EPA Conduct the Initial Review and Evaluate Key Technical Elements of the NPDWRs?

This section describes the specific technical reviews that EPA conducted, including the initial review, health effects, analytical methods, occurrence and exposure, treatment feasibility, and economic analysis.

1. Initial Review

EPA's initial review of all the contaminants included in the Six-Year Review 2 involved a simple identification of the NPDWRs that were being reviewed under concurrent EPA actions or had been reviewed and revised in EPA actions completed since 2002. Table V–1 provides a list of the 14 contaminants that met one of these criteria and identifies the recent or ongoing action in which the contaminant has been reviewed or is undergoing review. While these 14 contaminants are part of the Six-Year Review 2, they were not subject to any detailed analysis given that new information on these contaminants has been recently reviewed under separate actions. However, EPA requests comments on these contaminants along with the other contaminants discussed in detail in this notice.

The remaining 71 contaminants pass through this step to the review of the technical NPDWR elements, which are described in the following sections.

TABLE V–1—NPDWRS THAT HAVE BEEN REVIEWED OR ARE BEING REVIEWED UNDER RECENT OR ONGOING ACTIONS

Contaminant/indicator	Recent or ongoing action
Disinfection Byproducts	
Bromate	Stage 2 DBPR.
Chlorite[1]	Stage 2 DBPR.
HAA5: monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, dibromoacetic acid.	Stage 2 DBPR.
TTHMs: chloroform, bromodichloromethane, dibromochloromethane, bromoform	Stage 2 DBPR.
Disinfectant Residuals	
Chloramines[1]	Stage 2 DBPR.
Chlorine[1]	Stage 2 DBPR.
Chlorine dioxide	Stage 2 DBPR.
Inorganics	
Copper	Under consideration for long-term revisions.
Lead	LCR Short-Term Revisions Under consideration for long-term revisions.
Microorganisms	
Coliform	Total Coliform Rule-making currently underway.
Cryptosporidium	LT2ESWTR.
Giardia lamblia	LT2ESWTR.
Legionella[2]	LT2ESWTR, CCL3[3].
Viruses[2]	LT2ESWTR, GWR, CCL3[3].

DBPR—Disinfectants and Disinfection Byproducts Rule.
LT2ESWTR—Long-Term 2 Enhanced Surface Water Treatment Rule.
LCR—Lead and Copper Rule.
GWR—Ground Water Rule.

Dates of promulgation are as follows:
Stage 2 DBPR: 71 FR 388, January 4, 2006 (USEPA, 2006h).
LT2ESWTR: 71 FR 654, January 5, 2006 (USEPA, 2006g).
LCR Short-Term Regulatory Revisions: 72 FR 57782, October 10, 2007 (USEPA, 2007f).
GWR: 71 FR 65574, November 8, 2006 (USEPA, 2006f).
[1] Although the standard for this disinfectant was not revised as part of the Stage 2 DBPR, regulatory revisions need to be considered in conjunction with other disinfectant residuals and disinfection byproducts.
[2] LT2ESWTR and GWR promulgated treatment techniques that built upon and enhanced the existing regulations (Surface Water Treatment Rule, Interim Enhanced Surface Water Treatment Rule, and Long-Term 1 Enhanced Surface Water Treatment Rule) that address broad categories of microorganisms in treated water.
[3] Listed on the third Drinking Water Contaminant Candidate List or CCL3 (74 FR 51850, October 8, 2009 (USEPA, 2009l) in order to capture health and treatment information that may not be addressed by the current regulations.

2. Health Effects

The document, "Six-Year Review 2—Health Effects Assessment—Summary Report" (USEPA, 2009b), describes how EPA reviewed the contaminants discussed in today's action and provides the results of the health effects technical review. The principal objectives of the health effects review are to identify: (1) Contaminants for which a new health effects assessment indicates that a change in MCLG might be appropriate (*e.g.,* because of a change in cancer classification or a reference dose (RfD)), and (2) contaminants for which the Agency identifies new health effects information suggesting a need to initiate a new health effects assessment.

To meet the first objective, the Agency reviewed the results of health effects assessments completed under the following programs and identified, where feasible, possible MCLG values.

- EPA Integrated Risk Information System (IRIS).
- EPA Office of Pesticide Programs (OPP).
- National Academy of Sciences (NAS; when commissioned by EPA).

To meet the second objective, the Agency first conducted an extensive literature review to identify peer-reviewed studies. Then the Agency reviewed the studies to determine whether there was new health effects information such as reproductive and developmental toxicity that potentially affects the MCLG of any of the remaining contaminants that do not have an ongoing health effects assessment, including those with recently completed health effects assessments.

Table V–2 reflects the outcome of the health effects review for the NPDWRs discussed in today's action. EPA placed each contaminant into one of the following 13 categories.

- *Agency health effects assessment in process and not completed as of March 1, 2009.* The Agency currently is conducting a health effects assessment for the contaminant. That assessment will consider all available, relevant studies on the toxicology of the contaminant, including developmental and reproductive toxicity. This outcome contains three categories of contaminants.
- Category 1 contains 15 contaminants with MCLGs equal to or greater than zero and either MCLs that are limited by analytical feasibility or TT standards. For this category, EPA conducted further review of the potential for revisions to the MCL due to possible changes in analytical feasibility. The Agency's review of new information that might affect the MCL for one of these contaminants is a refinement of the protocol. During Six-Year Review 1, EPA took no further action on any contaminants with ongoing health effects assessments. EPA generally sets each MCL as close to the MCLG as is feasible, and a common limitation is the availability of analytical methods to reliably measure the contaminant.
- Category 2 contains two contaminants (arsenic and uranium) that have MCLGs equal to zero and MCLs that are based on the costs and benefits balancing provision in SDWA 1412(b)(6)(A). Any changes in the ongoing health effects assessment could impact the evaluation of benefits for these contaminants. Therefore, EPA has decided to take no further action to evaluate these two contaminants until completion of the health effects assessment.
- Category 3 contains 13 contaminants with non-zero MCLGs and MCLs generally equal to their respective MCLGs. Because EPA cannot determine whether there is potential to revise either the MCLG or the MCL until after the health effects assessment is completed, EPA plans to take no further action on these contaminants at this time.
- *New health effects assessment completed since Six-Year Review 1.* An IRIS or OPP assessment has been completed since 2002. EPA also conducted a follow-up literature search to confirm that no new information became available following the completion of the new health effects assessment. Table V–2 shows four categories of contaminants with new health effects assessments: four with results indicating potential for lower MCLG (Category 4), five with results indicating potential for higher MCLG (Category 5), two with results indicating the MCLG remains appropriate (Category 6), and three contaminants for which emerging information following the completion of a health effects assessment or a pending pesticide cancellation decision may affect EPA's review (Category 7).
- *Literature review only conducted during Six-Year Review 2.* For the contaminants that did not have an ongoing health effects assessment or a new one completed during the current review period, EPA conducted a review of the health effects literature to identify whether there was new information with potential to revise the MCLG. There are six categories of contaminants.
- Three categories pertain to contaminants that had a health effects assessment completed during Six-Year Review 1, including two with possible lower MCLGs (Category 8), three with possible higher MCLGs (Category 9), and three with no potential to revise their MCLGs (Category 10). During Six-Year Review 1, the Agency determined that possible changes to these contaminants' NPDWRs were a low priority activity for the Agency because of: competing workload priorities, the administrative costs associated with rulemaking, and the burden on States and the regulated community to implement any regulatory changes. As part of Six-Year Review 2, EPA is assessing whether there is new information that affects this determination.
- Category 11 contains five contaminants for which the Agency identified new information, described in section VI, that could impact the MCLG and, therefore, these contaminants are considered potential nominees for a new health assessment.
- Category 12 contains seven carcinogens for which the literature review sought new information on whether there might be a nonlinear mode of action or other reproductive and developmental health effects.

• Category 13 contains seven contaminants with non-zero MCLGs, for which EPA conducted a full literature search, including developmental and reproductive toxicity.

Table V-2. Summary of the Outcome of the Six-Year Health Effects Review			
Health Effects Review Category			Contaminants
Health Effects Assessment in Process During Information Review Period for the Notice (and not available by the March 1, 2009 cutoff date)	Category 1: MCLG ≥ 0 and MCL based on Analytical Feasibility or standard is a TT		15 Total - acrylamide; alpha particles; benzo(a)pyrene; beta particles; carbon tetrachloride; DEHP; 1,2-dichloroethane; dichloromethane; pentachlorophenol; PCBs; radium; dioxin; tetrachloroethylene; thallium; and trichloroethylene
	Category 2: MCLG = 0 and MCL based on cost-benefit		2 Total – arsenic and uranium
	Category 3: MCLG > 0 and the MCL is set at the MCLG		13 Total – antimony; asbestos; beryllium; cadmium; cyanide; DEHA; 1,2-dichlorobenzene; 1,4-dichlorobenzene; cis-1,2-dichloroethylene; trans-1,2-dichloroethylene; ethylbenzene; fluoride; and styrene
Health Effects Assessment Completed Since Six-Year Review 1	Category 4: New health risk information could lower MCLG/MCL		4 Total – 2,4-D (2005, new data); endothall (2005, new data); toluene (2005, uncertainty factor adjustment); and total xylenes (2003, uncertainty factor adjustment)
	Category 5: New health risk information could raise MCLG/MCL		5 Total – alachlor (2006[1]); barium (2005); diquat (2002[2]); glyphosate (2002[3]); and 1,1,1-trichloroethane (2007, new data)
	Category 6: No new health risk information		2 Total – benzene (2003); EDB (2004)
	Category 7: Awaiting the outcome of emerging information or cancellation decision		3 Total - atrazine[4]; simazine[4]; and carbofuran[5]
Literature Review Only	Health Effects Assessment Completed During Six-Year Review 1	Category 8: New health risk information could lower MCLG/MCL	2 Total – hexachlorocyclopentadiene (2001); and oxamyl (2000)
		Category 9: New health risk information could raise MCLG/MCL	3 Total – 1,1-dichloroethylene (2002); lindane (2002); and picloram (1995)
		Category 10: No new health risk information	3 Total – chlordane (1998), inorganic mercury (1997),and vinyl chloride (2000)
	Category 11: New Information Identified; Potential Nominee for a New Assessment		5 Total – total chromium (hexavalent); nitrate; nitrite; selenium; and 1,2,4-trichlorobenzene
	Category 12: MCLG = 0 No new health risk information		7 Total — DBCP; 1,2-dichloropropane; epichlorohydrin; heptachlor; heptachlor epoxide; hexachlorobenzene; and toxaphene
	Category 13:MCLG > 0 No new health risk information		7 Total – dalapon; dinoseb; endrin; methoxychlor; monochlorobenzene; 2,4,5-TP; and 1,1,2-trichloroethane

1. The 2006 cumulative risk document (USEPA, 2006a) does not present a new assessment; it uses the cancer assessment in the 1998 Reregistration Eligibility Decision (RED; USEPA, 1998a).
2. The 2002 Interim Tolerance Reassessment and Risk Management Decisions (TRED; USEPA, 2002d) does not include a change in risk values, which are those reported in the 1995 RED (USEPA, 1995a).
3. The 2002 TRED (USEPA, 2002a) uses risk values consistent with those reported in the 1993 RED (USEPA, 1993b), with differences only in RfD rounding.
4. Although atrazine and simazine had new health effects assessments completed during the Six-Year Review 2 information period, on October 7, 2009, the Agency announced its intent to re-evaluate the risk assessment for atrazine. Because the simazine assessment is based on atrazine data, simazine was placed in this same category.
5. Although carbofuran had a new health effects assessment completed during the Six-Year Review 2 information period, a recent pesticide cancellation decision could affect the MCLG.

In addition to identifying for which contaminants there is information that potentially affects the MCLG, the health effects review indicates which contaminants proceed to other review steps under the protocol. Several

contaminants proceed to the analytical methods review to determine whether improvements in analytical methods indicate potential to revise the practical quantitation limit (PQL) in the NPDWRs. As Table V–3 shows, 14 contaminants from Category 1 proceed to the analytical methods review—despite an ongoing health effects assessment—because their MCLs are limited by their respective PQLs. These 14 include alpha particles; benzo(a)pyrene; beta particles; carbon tetrachloride; DEHP; 1,2-dichloroethane; dichloromethane; pentachlorophenol; PCBs; radium; dioxin; tetrachloroethylene; thallium; trichloroethylene. In addition, two contaminants in Category 6 (benzene and EDB) and two in Category 10 (chlordane and vinyl chloride) have MCLs that are limited by PQLs and, therefore, these contaminants proceed to the analytical methods review even though their health effects assessments indicated no change to their respective MCLG values. Similarly, six contaminants in Category 12 (DBCP; 1,2-dichloropropane; heptachlor; heptachlor epoxide; hexachlorobenzene; toxaphene) and one in Category 13 (1,1,2-trichloroethane) have MCLs that are limited by their respective PQL and, therefore, proceed to the analytical methods review despite there being no new information on health effects.

Among the contaminants having new health effects information during either Six-Year Review 2 or the previous review that potentially affects their respective MCLG values (*i.e.,* potentially lower MCLGs), four in Category 4 (2,4-D; endothall; toluene; total xylenes) and two in Category 8 (hexachlorocyclopentadiene and oxamyl) proceed to the analytical methods review. For each of these contaminants, EPA evaluated whether analytical feasibility might become a limiting factor if EPA were to consider a lower MCLG and whether new information indicates there is a potential to revise the PQL.

Two contaminants (acrylamide from Category 1 and epichlorohydrin from Category 12) bypass the analytical methods review because they have TT standards and PQLs are not a limiting factor for the standards. Five contaminants from Category 5 (alachlor; barium; diquat; glyphosate; 1,1,1-trichloroethane) and three from Category 9 (1,1-dichloroethylene; lindane; picloram) bypass the analytical methods review because the new health effects information identified either during Six-Year Review 2 or Six-Year Review 1 indicated possible increases in their respective MCLGs. Each of these contaminants has a PQL that is lower than its MCLG and, therefore, a review of whether the PQL could be lower is inconsequential.

TABLE V–3—CONTAMINANTS PROCEEDING TO ANALYTICAL FEASIBILITY REVIEW FROM HEALTH EFFECTS REVIEW

Health effects review category[1]	Contaminants proceeding to analytical feasibility review
Health Effects Assessment in Process During Information Review Period for the Notice (and not available by the March 1, 2009 cutoff date):	
Category 1	14 of 15 proceeding because PQL limits MCL: alpha particles; benzo(a)pyrene; beta particles; carbon tetrachloride; DEHP; 1,2-dichloroethane; dichloromethane; pentachlorophenol; PCBs; radium; dioxin; tetrachloroethylene; thallium; trichloroethylene. Acrylamide bypasses the analytical review because it does not have a PQL.
Category 2	0 of 2 proceeding because there is no potential to revise MCL unless completed health effects assessment indicates change to benefits analysis (arsenic and uranium).
Category 3	0 of 13 did not proceed because MCL set at MCLG and health assessment still in process.
Health Effects Assessment Completed Since Six-Year Review 1:	
Category 4	4 of 4 proceeding to evaluate whether PQL is or could be below possible MCLG: 2,4-D; endothall; toluene; total xylenes.
Category 5	0 of 5 proceeding; all 5 bypass analytical review because PQL not a factor in review.
Category 6	2 of 2 proceeding because PQL limits MCL: benzene and EDB.
Category 7	0 of 3 proceeding because there is no potential to revise an MCL that is based on the MCLG under review.
Literature Review Only:	
Category 8	2 of 2 proceeding to evaluate whether PQL is or could be below possible MCLG: hexachlorocyclopentadiene; oxamyl.
Category 9	0 of 3 proceeding; all 3 bypass analytical review because PQL not a factor in review.
Category 10	2 of 3 proceeding because PQL limits MCL: chlordane and vinyl chloride.
Category 11	0 of 3 proceeding because there is no potential to revise an MCL that is based on the MCLG that may be further reviewed.
Category 12	6 of 7 proceeding because PQL limits MCL: DBCP; 1,2-dichloropropane; heptachlor; heptachlor epoxide; hexachlorobenzene; toxaphene epichlorohydrin bypasses the analytical review because it does not have a PQL.
Category 13	1 of 7 proceeding because PQL limits MCL: 1,1,2-trichloroethane.

[1] These categories correspond to the categories in Table V–2.

3. Analytical Feasibility

EPA has a process in place to approve new analytical methods for drinking water contaminants; therefore, the review and approval of potential new methods are outside the scope of the Six-Year Review protocol. EPA recognizes, however, that the approval and addition of new and/or improved analytical methods (since the promulgation of the NPDWRs considered under this section of the review) may enhance the ability of laboratories to quantify contaminants at lower levels. This ability of laboratories to measure a contaminant at lower levels could affect its PQL, the value at which an MCL is set when it is limited by analytical feasibility. Therefore, the Six-Year Review process includes a

review of whether there have been changes in analytical feasibility for the subset of the NPDWRs that reached this stage of the decision tree. These include contaminants with or without ongoing health effects assessments that have MCLs limited by analytical feasibility and contaminants with possible MCLGs that are lower than their current PQLs.

The document, "Analytical Feasibility Support Document for the Second Six-Year Review of Existing National Primary Drinking Water Regulations" (USEPA, 2009c), describes the process EPA used to evaluate whether changes in PQL are possible in those instances where the MCL is limited, or might be limited, by analytical feasibility. EPA uses the PQL to estimate the level at which laboratories can routinely measure a chemical contaminant in drinking water. Historically, EPA has used two main approaches to determine a PQL for SDWA analytes: (1) Performance Evaluation (PE) data from Water Supply (WS) studies, which is the preferred alternative when sufficient data are available; or (2) a multiplier method, in which the PQL is calculated by multiplying the EPA-derived method detection limit (MDL) by a factor of 5 or 10 (50 FR 46880, November 13, 1985 (USEPA, 1985); 52 FR 25690 July 8, 1987 (USEPA, 1987); 54 FR 22062 May 22, 1989 (USEPA, 1989b)).

The review protocol for Six-Year Review 1 utilized data from PE studies, which were laboratory accreditation studies conducted under EPA oversight until 1999, when the program was privatized. Now, the National Environmental Laboratory Accreditation Conference (NELAC) conducts the accreditation program via Performance Testing (PT) studies. PQL reassessments discussed in this notice are based on the Six-Year 1 PE data collected through late 1999 and laboratory passing rate PT data collected from late 1999 through 2004. One PT provider made pass/fail rates from PT studies available to EPA. This major provider accounts for a large portion of the PT results nationwide (USEPA, 2009c).

Using PE or PT data to derive the PQL for chemical NPDWRs involves determining the concentration of an analyte at which 75 percent of EPA Regional and State laboratories achieve results within a specified acceptance range (*see* 54 FR 22062 at 22100, May 22, 1989 (USEPA, 1989b)). For Six-Year Review 2, EPA did not have sufficient PT and PE data to recalculate any PQL values, in part because the spiked concentrations were rarely far enough below current PQLs. Instead, EPA used the PT and PE passing rate results (*i.e.,* the percent of laboratories passing a performance test for a given study) at and below the current PQL to determine whether data may support a lower PQL.

When PT results were not available below the PQL or when the results did not provide conclusive indications regarding a potential to revise a PQL, EPA used two alternate approaches to estimate possible PQLs: an approach based on the minimum reporting levels (MRLs) obtained as part of the Six-Year Review Information Collection Request (ICR) (*see* section V.B.4), and an approach based on method detection limits (MDL). While EPA prefers to use laboratory performance data to calculate a PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL.

A laboratory reports an MRL when it does not detect a particular contaminant in a sample of water. The MRL is the lowest concentration level of a contaminant that a laboratory can reliably measure or quantitate within specified limits of precision and accuracy under routine laboratory operating conditions using a given method (USEPA, 2009c). MRL values were included with the data provided by the States in response to the Six-Year Review ICR. EPA evaluated the distribution of MRL values for each contaminant to identify the mode or value occurring most frequently for that contaminant (*i.e.,* the modal MRL) and estimated the percentage of MRL values that are equal to or less than the modal MRL. When this percentage was at least 80 percent and the modal MRL was below the PQL, EPA chose to use this modal MRL value as an estimated quantitation limit (also referred to as an EQL throughout this document). The use of modal MRLs is a refinement of the protocol, necessitated by limited availability of PT and PE data below the current PQL and made possible by the extensive amount of information included in the Six-Year Review ICR dataset (*see* section V.B.4).

When the MRL data did not meet the 80 percent threshold used for deriving an EQL via this approach, EPA used an MDL approach to derive an EQL. As noted previously, this approach has been used in the past to derive PQLs for regulated contaminants. In addition, this same approach was used to identify possible analytical feasibility levels for Six-Year Review 1 (USEPA, 2003a). In deriving these levels, the Agency used the MDLs associated with the analytical methods approved by EPA for drinking water analysis. EPA obtained MDL values from individual analytical methods developed and approved by EPA for use on drinking water. EPA applied a multiplier to these MDL values and based the EQL on the midpoint of the resulting range (*i.e.,* the mean if there are two MDLs or a median if there are more than two MDLs). The multiplier is 10 for most contaminants except dioxin and EDB, which have PQLs that were historically based on an MDL multiplier of 5.[4] EPA also used the MDL multiplier approach to confirm whether EQLs based on MRL data are consistent with the range of values based on an MDL multiplier approach.

EPA used the EQL thresholds derived via the modal MRL or MDL-multiplier approaches for the occurrence analysis (*see* section V.B.4) to help the Agency determine if there may be a meaningful opportunity to improve public health protection. It should be noted, however, that the EQL does not represent the Agency's intent to promulgate new PQLs with this notice. Any revisions to PQLs will be part of future rule making efforts.

EPA performed analytical feasibility analyses for the contaminants identified in Table V–3 as proceeding to this portion of the review. Table V–4 shows the contaminants gathered into three more general categories and the outcomes of the Agency's review.

• *A health effects assessment indicates potential for lower MCLG.* This category includes the six contaminants identified in the health effects review as having information indicating the potential for a lower MCLG—four with new health effects assessments completed during Six-Year Review 2 and two with health effects assessments completed during Six-Year Review 1. Although their current MCLs are not limited by a PQL, EPA reviewed analytical feasibility to determine if analytical feasibility might limit the potential for MCL revisions. For two contaminants (endothall and oxamyl), the current PQL is higher than the possible MCLG identified in the health effects review. For these contaminants, the potential to lower their PQLs based on PE and PT data is inconclusive, but MRL and MDL data indicate the potential to revise the PQL. EPA thus proceeded to evaluate occurrence data to determine whether a lower PQL, and thus the MCL, may provide a meaningful opportunity to improve public health protection. The current PQL is not a limiting factor for the

[4] As noted in Table V–4 and sections VI.38 and VI.59, EPA found that there was no potential to lower the PQL for dioxin and EDB. Even if EPA had used a 10 × MDL multiplier for these two contaminant instead of the 5 x MDL multiplier, this would not have changed the outcome of the analytical feasibility assessments.

remaining four contaminants identified by the health effects review as having possible changes in their MCLG (*i.e.,* 2,4–D, hexachlorocyclopentadiene, toluene, and xylenes).

• *Contaminants with ongoing health effects assessments and existing MCLs are based on analytical feasibility.* This category includes 14 contaminants with ongoing health assessments with existing MCLs that are greater than their MCLGs because they are limited by analytical feasibility. One contaminant has a non-zero MCLG (thallium) and the remaining 13 contaminants have MCLGs equal to zero. Although a risk assessment is in process for these contaminants, because SDWA requires the Agency to set the MCL as close to the MCLG as feasible, EPA evaluated whether the PQL is likely to be lower for these contaminants. For four of these contaminants (carbon tetrachloride, 1,2-dichloroethane, tetrachloroethylene, and trichloroethylene), EPA concluded that new information from PT studies, along with MRL and MDL data, indicate the potential to revise the PQL. For one contaminant (dichloromethane), data from PT studies are inconclusive, but MRL and MDL data indicate the potential to revise the PQL. For these five contaminants, EPA proceeded to evaluate occurrence data to determine whether lowering the PQL, and thus the MCL, may provide a meaningful opportunity to improve public health protection.[5] For the remaining nine contaminants, either EPA did not have sufficient new information to evaluate analytical feasibility or EPA concluded that new information does not indicate the potential for a PQL revision. Consequently, the outcome of the review for these nine contaminants is to take no action at this time.

• Contaminants without ongoing health effects assessments or for which no new health risk information was identified and for which existing MCLs are based on analytical feasibility and greater than their MCLGs. For the 11 contaminants in this category, EPA evaluated available PT and PE data as well as MRL and MDL data to determine whether there is potential to lower the PQL and thereby set the MCL closer to the MCLG. For five of these contaminants (benzene chlordane, 1,2-dichloropropane, hexachlorobenzene, and 1,1,2-trichloroethane) EPA concluded that new information from PT studies, along with MRL and MDL data, indicates that while it might be possible to set a lower PQL, the data are insufficient to support an actual PQL recalculation at this time. Consequently, the outcome of the review for these contaminants is to take no action at this time. For five additional contaminants (DBCP, heptachlor, heptachlor epoxide, toxaphene, and vinyl chloride), the data from PT studies are inconclusive, but MRL and/or MDL data indicate potential for a lower PQL, as indicated in Table V–4. For these five contaminants, EPA proceeded to evaluate occurrence data to determine whether lowering the PQL, and thus the MCL, may provide a meaningful opportunity to improve public health protection. For the final contaminant, ethylene dibromide (EDB), none of the data sources indicate potential to revise and the outcome of the review for this contaminant is to take no action at this time.

Table V–4 lists the type of data that indicate potential for a PQL reduction. The list includes "PT" when the PQL reassessment based on PT and PE data (USEPA, 2009c) reports that a reduction is supported. The list also includes "MRL" and "MDL" when either of these approaches indicates potential for PQL reduction. A result of "PQL reduction supported" without a "PT" in the list indicate that the PQL reassessment outcome is uncertain, but other data (*i.e.,* MRL and/or MDL) indicate potential for PQL reduction. When the PQL reassessment outcome is that the current PQL remains appropriate, Table V–4 shows the result "Data do not support PQL reduction." The contaminant specific discussions in section VI of today's action provide the results of the analytical feasibility review for all the contaminants in Table V–4.

TABLE V–4—NPDWRS INCLUDED IN THE ANALYTICAL FEASIBILITY REASSESSMENT AND THE RESULT OF THAT ASSESSMENT

Contaminant	Current PQL	Analytical feasibility reassessment result
6 Contaminants Identified Under the Health Effects Review as Having Potential for Lower MCLG		
2,4-D (possible MCLG: 0.04 mg/L)	0.005 mg/L	PQL not limiting.
Endothall (possible MCLG: 0.05 mg/L)	0.09 mg/L	PQL reduction supported (MRL, MDL).
Hexachlorocyclopentadiene (possible MCLG: 0.04 mg/L)	0.001 mg/L	PQL not limiting.
Oxamyl (possible MCLG: 0.002 mg/L)	0.02 mg/L	PQL reduction supported (MRL, MDL).
Toluene (possible MCLG: 0.6 mg/L)	0.005 mg/L	PQL not limiting.
Total xylenes (possible MCLG: 1 mg/L)	0.005 mg/L	PQL not limiting.
14 Contaminants *with* Ongoing Health Effects Assessments (as of March 1, 2009) and MCLs Are Based on Analytical Feasibility and Higher than MCLGs		
Alpha particles	No PQL and no new information.	
Benzo(a)pyrene	0.0002 mg/L	Data do not support PQL reduction.
Beta particles	No PQL and no new information.	
Carbon Tetrachloride	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
DEHP	0.006 mg/L	Data do not support PQL reduction.
1,2-dichloroethane	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
Dichloromethane	0.005 mg/L	PQL reduction supported (MRL, MDL).
Pentachlorophenol	0.001 mg/L	Data do not support PQL reduction.
PCBs	0.0005 mg/L	Data do not support PQL reduction.
Radium	No PQL and no new information.	

[5] If EPA found that there was no meaningful opportunity to revise the MCL (*i.e.,* carbon tetrachloride, 1,2-dichloroethane and dichloromethane), these contaminants remained in the health effects assessment in process category.

TABLE V–4—NPDWRS INCLUDED IN THE ANALYTICAL FEASIBILITY REASSESSMENT AND THE RESULT OF THAT ASSESSMENT—Continued

Contaminant	Current PQL	Analytical feasibility reassessment result
Dioxin	3E–08 mg/L	Data do not support PQL reduction.
Tetrachloroethylene	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
Thallium	0.002 mg/L	Data do not support PQL reduction.
Trichloroethylene	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
11 Contaminants *without* Ongoing Health Effects Assessments and MCLs Are Based on Analytical Feasibility and Higher than MCLGs		
Benzene	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
Chlordane	0.002 mg/L	PQL reduction supported (PT, MRL, MDL).
DBCP	0.0002 mg/L	PQL reduction supported (MDL).
1,2-dichloropropane	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
EDB	0.0005 mg/L	Data do not support PQL reduction.
Heptachlor	0.0004 mg/L	PQL reduction supported (MRL, MDL).
Heptachlor epoxide	0.0002 mg/L	PQL reduction supported (MRL, MDL).
Hexachlorobenzene	0.001 mg/L	PQL reduction supported (PT, MRL, MDL).
Toxaphene	0.003 mg/L	PQL reduction supported (MRL, MDL).
1,1,2-trichloroethane	0.005 mg/L	PQL reduction supported (PT, MRL, MDL).
Vinyl chloride	0.002 mg/L	PQL reduction supported (MRL).

mg/L—milligrams per liter

EPA conducted occurrence and exposure analyses for the contaminants in Table V–4 for which a PQL reduction is supported or the PQL is not limiting. This includes the 6 contaminants with new health effects assessments that indicate potentially lower MCLGs, 5 of the 14 contaminants with ongoing health effects assessments and MCLs limited by PQLs, and 10 of the 11 contaminants without ongoing health effects assessments and MCLs limited by PQLs.

4. Occurrence and Exposure Analysis

To support the national contaminant occurrence assessments under Six-Year Review 2, EPA conducted an Information Collection Request. Through this process EPA requested that all States and primacy entities voluntarily submit their SDWA compliance monitoring data. This request was for the submission of compliance monitoring data collected between January 1998 and December 2005 for 79 regulated contaminants. A total of 51 States and entities provided compliance monitoring data that included all analytical detection and non-detection records. These data represent the national occurrence of regulated contaminants in public drinking water systems. Through extensive data management efforts, quality assurance evaluations, and communications with State data management staff, EPA established a high quality dependable contaminant occurrence database consisting of data from 45 States and two Indian Tribes (*see* map in Figure V–2). Details of the data management and data quality assurance evaluations are available in the support document entitled, "Analysis of Occurrence Data from the Second Six-Year Review of Existing National Primary Drinking Water Regulations" (USEPA, 2009f).

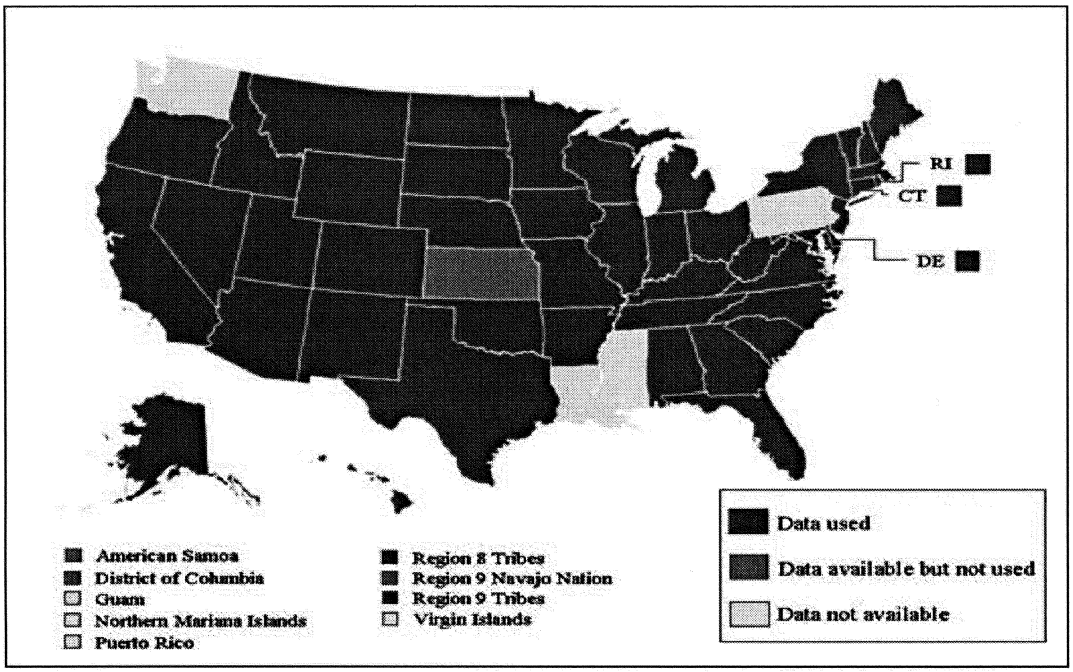


Figure V-2. States with Compliance Monitoring Data Included in the Six-Year Review 2

The contaminant occurrence data from the 45 States and two Indian Tribes comprise more than 15 million analytical records from approximately 132,000 public water systems. Approximately 254 million people are served by these public water systems nationally. Records were submitted for 16 inorganic chemicals, 32 synthetic organic chemicals, 21 volatile organic chemicals, 7 radiological contaminants, and 3 microbiological [6] contaminants. The number of States and public water systems represented in the dataset varies across contaminants because of variability in voluntary State data submissions and contaminant monitoring schedules. This is the largest, most comprehensive set of drinking water compliance monitoring data ever compiled and analyzed by EPA.

EPA used a two-stage analytical approach to analyze these data and characterize the national occurrence of contaminants.[7] The first stage of analysis provides a straightforward evaluation of contaminant occurrence. This stage 1 occurrence analysis is a simple, non-parametric count of occurrence of regulated contaminants in public water systems.[8] A typical stage 1 occurrence analysis generates a count of the number (or percentage) of systems with at least one analytical detection having a concentration greater than a concentration threshold of interest, *i.e.,* a possible MCLG or EQL. It provides a health protective approach that may be more appropriate for contaminants that produce health effects after shorter than lifetime exposure periods (*e.g.,* several months or less). This approach also generates a conservative (*i.e.,* upwardly biased) estimate of the number of potential systems having contaminant occurrence at levels of interest for contaminants having health risks that are only related to chronic or long-term exposure over many years.

The stage 2 occurrence analysis estimates national contaminant occurrence by generating estimated long-term mean concentrations of a specific contaminant at systems nationally. This provides occurrence analyses that are less conservative than the stage 1 occurrence analysis (because the stage 2 occurrence analysis is based on estimated mean concentrations rather than on single maximum concentrations), and also provides occurrence analyses that may be more reflective of potential chronic exposure. Generally, the stage 1 occurrence analysis reflects a rough approximation of peak occurrence while the stage 2 occurrence analysis is based on estimated average occurrence. A complete description of the two-stage analytical approach and a detailed presentation of occurrence estimates are available in the support document entitled, "Analysis of Occurrence Data from the Second Six-Year Review of Existing National Primary Drinking Water Regulations" (USEPA, 2009f).

EPA calculated the system means for the stage 2 occurrence analysis using a simple arithmetic average of all detection and non-detection data for each public water system. Because the contaminant concentrations associated with the non-detection data are unknown, EPA assigned three different values to the non-detection results to estimate a range of system-level means, which then allowed EPA to estimate number and percent of systems with estimated means exceeding selected threshold values. Two of the three values are based on the MRL values that accompany the non-detection results in the Six-Year Review ICR dataset. The MRL is the lowest level that can be reliably achieved within specified limits of precision and accuracy under routine laboratory operating conditions using a given method. The three values that EPA substituted for non-detection results were MRL, ½ MRL, and zero.

The most conservative approach was to assume that all non-detection results

[6] The compliance monitoring data for the microbiological contaminants were collected to support ongoing rule development so these data have not been analyzed separately in this action.

[7] The use of the stage 1 and stage 2 terminology should not be confused with the Stage 1 and Stage 2 Disinfectants and Disinfection By Products Rulemakings. Instead, this terminology has been used to describe the two stages of the occurrence analyses performed for Six-Year Review 2, as well as Six-Year Review 1.

[8] These analyses are conservative in the sense that they are protective of human health (*i.e.,* they are more likely to overestimate risks to human health than underestimate them).

were equal to the MRL. This approach yields an upper-bound estimate of each system's level of exposure. EPA also explored the less conservative assumption that concentrations of the non-detection results were uniformly distributed between the MRL and zero, thereby substituting one-half the MRL for all non-detection results. Finally, EPA considered the assumption that the actual concentration for each non-detection result was typically much smaller than the MRL, supporting the use of zero to represent each non-detection. This method yielded a lower-bound estimate of the system's mean. This simplified approach differs from the stage 2 occurrence analysis approach in the Six-Year Review 1, which used more sophisticated modeling methods to address the non-detection results. That analysis, however, was based on a substantially smaller dataset (*i.e.,* data from 16 States instead of 45 States). (Note that many States substitute zero for all non-detections when determining compliance with the NPDWRs.) EPA uses each of the assumptions in the stage 2 occurrence analyses in order to obtain reasonable bounds on the actual system mean concentrations. Once the system means were calculated for each of the three substitution methods, the results means were then compared to the various thresholds of interest (*e.g.,* the number and percent of systems with a mean concentration above a health threshold of concern).

The two-stage analytical approach was previously developed for Six-Year Review 1. The data management and general occurrence analytical approach were peer-reviewed for use under the Six-Year Review 1.

EPA conducted the stage 2 occurrence analysis for 5 of the 14 NPDWRs in Table V–4 with ongoing health effects assessment and MCLs that are limited by PQLs for which EPA identified analytical feasibility data supporting possible PQL revision: carbon tetrachloride; dichloromethane; 1,2-dichloroethane; tetrachloroethylene; and trichloroethylene. EPA also conducted the stage 2 occurrence analysis for the five contaminants with health effects assessment changes that indicate potential to reduce the MCLG and the ten contaminants that do not have ongoing health effects assessments, but do have MCLs limited by PQLs and new data indicate potential to reduce the PQLs (*see* Table V–4). Note that EPA conducted the Stage 1 analysis for one contaminant with health effects assessment changes that indicate a potential to reduce the MCLG (*i.e.,* oxamyl) because the health endpoint is associated with acute exposure. EPA used the results of these analyses to identify which possible NPDWR revisions present a meaningful opportunity to improve the level of health protection. Section VI contains the occurrence estimates for each of the 21 contaminants (shown in Table V–4) having either new information suggesting potentially lower MCLGs or MCLs based on PQLs that might be lower based on new information.

Because the Six-Year Review ICR data reflect water quality at entry points to the distribution system, the occurrence analysis method described above is not adequate to evaluate the cost savings potential for the nine contaminants that have health effects assessment changes that indicate potential for higher MCLG values (*see* Table V–2). EPA lacks the comprehensive information on source water quality and existing treatment needed to determine how many systems would be able to alter treatment practices were an MCLG to increase. To review the potential for cost savings, EPA conducted a qualitative assessment of the potential for treatment cost savings based on three factors: the magnitude of the difference between the current MCLG and the possible MCLG; available source water occurrence information; and the potential for systems having best available technologies (BATs) or small system compliance technologies (SSCTs) to realize operational cost savings (USEPA, 2009g).

There is no comprehensive database of water quality in drinking water sources. Therefore, EPA used source water quality information from two national data sources, the National Water Quality Assessment (NAWQA) program conducted by the U.S. Geological Survey (USGS), and EPA's STORET (short for STOrage and RETrieval) data system, which are part of EPA's Office of Ground Water and Drinking Water's National Contaminant Occurrence Database (NCOD). The STORET data come from a variety of monitoring programs and the NAWQA data come from watershed or "study units" that USGS selected to reflect important hydrologic and ecological resources; critical sources of contaminants, including agricultural, urban, and natural sources; and a high percentage of population served by municipal water supply and irrigated agriculture. The original 51 study units account for more than 70 percent of total water use (excluding thermoelectric and hydropower) and more than 50 percent of the population's supply of drinking water (Gilliom *et al.,* 2006). For each dataset, EPA estimated the number and percent of monitoring locations with at least one sample result above each contaminant's current MCL, and above a possible MCLG based on the new information from the contaminant's health effects assessment. Although these results do not indicate how many systems may be treating for each contaminant, they provide the best available information regarding the frequency of contaminant occurrence at levels of interest. Section VI reports the results by contaminant.

5. Treatment Feasibility

An NPDWR either identifies the BATs for meeting an MCL, or establishes enforceable treatment technique requirements. For the NPDWRs addressed in section VI of today's action, two have TT requirements and the rest have an MCL. All of the MCLs are set equal to the MCLG or the PQL or by benefit-cost analysis; none are currently limited by treatment feasibility. As a refinement for Six-Year Review 2, EPA considered treatment feasibility after identifying contaminants with potential to lower an MCL or change a TT that constituted a meaningful opportunity to improve the level of health protection. The EPA document, "Water Treatment Technology Feasibility Support Document for Chemical Contaminants for the Second Six-Year Review of National Primary Drinking Water Regulations" (USEPA, 2009g), describes the process EPA used to evaluate treatment feasibility, where appropriate, and provides the results of these analyses. As a part of this review, EPA utilized the same sources that have been the primary resources in development of EPA regulations and guidance, including published EPA treatment reports, peer-reviewed journals, and other technology sources, as well as information received from EPA stakeholders.

a. MCL-Type Rules

EPA evaluated existing treatment technology information for two MCL-type NPDWRs (tetrachloroethylene and trichloroethylene) where EPA determined that lowering the PQL and thus the MCL could lead to a meaningful opportunity to improve public health protection, to determine whether treatment feasibility would be a limiting factor.

Based on this evaluation, the Agency believes that treatment capabilities would be adequate to support a lower MCL value for these contaminants for which a lower MCL may be appropriate (USEPA, 2009g). EPA's assessment of the treatment technologies for these

contaminants that are specified as BAT in the current NPDWR and some of the small system compliance technologies specified by EPA in 1998 (USEPA, 1998b), shows that they are effective enough to achieve concentrations as low as the EQL. If EPA were to determine that it is appropriate to revise these NPDWRs, it would undertake a more thorough review of treatment feasibility, including a consideration of costs, to determine whether treatment feasibility would be a constraint or not.

b. Treatment Technique-Type Rules

EPA reviewed two chemical NPDWRs—acrylamide and epichlorohydrin (both classified B2 carcinogens)—for which a TT is set in lieu of an MCL. The TT requirement limits the allowable acrylamide and epichlorohydrin monomer levels in polymeric coagulant aids and their dosages for drinking water treatment, storage, and distribution. Although a health effects assessment for acrylamide is ongoing, it is a carcinogen with an MCLG of zero and the draft health effects assessment indicates that the cancer classification remains the same. As a refinement in Six-Year Review 2, EPA considered new information to determine if the TTs for these contaminants may need to be revised. This information indicates that improvements in manufacturing capabilities have reduced the residual monomer content in acrylamide and epichlorohydrin-based polymeric coagulants aids and these changes would support revisions to the TTs for acrylamide and epichlorohydrin. Sections VI.B.1 and VI.B.36 of today's action summarize these issues for acrylamide and epichlorohydrin, respectively.

6. Other Regulatory Revisions

In addition to possible revisions to MCLGs, MCLs, and TTs, EPA considered whether other regulatory revisions are needed, such as monitoring and system reporting requirements, as a part of the Six-Year Review 2. EPA utilized the protocol established during the Six-Year Review 1 to evaluate which implementation issues to consider (USEPA, 2003b). EPA's protocol focused on items that were not already being addressed, or had not been addressed, through alternative mechanisms (*e.g.,* as a part of a recent or ongoing rulemaking). EPA considered potential implementation-related revisions in these cases if the revisions:

- Represented a change to an NPDWR, as defined under section 1401 of SDWA; [9]
- Were "ready" for rulemaking—that is, the problem to be resolved had been clearly defined, and specific options to address the problem had been formulated; and
- Would clearly improve the level of public health protection and/or provide a meaningful opportunity for cost savings (either monetary or burden reduction) while not lessening public health protection.

a. Issues Identified by the EPA/State Workgroup

To gather input regarding implementation-related concerns and help the Agency identify the top one or two issues for Six-Year Review 2 (USEPA, 2009h), EPA requested that the Association of State Drinking Water Administrators (ASDWA) form a workgroup of member States and primacy agencies. In the fall of 2007, ten member States agreed to participate and confer with EPA on a joint EPA/State workgroup. The State/EPA workgroup initially identified 22 issues, but narrowed the list to 4 items. Of these four items, three appeared to be within the scope of this NPDWR review, and EPA agreed that an information or fact sheet might be appropriate for the fourth item regarding public notification (PN) requirements for fluoride.[10] The EPA/State workgroup agreed that public input via the **Federal Register** would provide additional insight on the national scope of these three issues (*i.e.,* Are the issues isolated to a few States or more widespread?), the importance of these issues to other States as well as water systems, and ideas on potential resolutions. Table V–5 provides a brief description of the remaining three issues and some of the potential solutions discussed in the workgroup meetings.

EPA is requesting public input and further information on these three implementation issues to better inform future State/EPA workgroup discussions. More specifically, EPA would like to gauge how many States and/or public water utilities may be affected by these issues, and which one or two issues are most important to States. EPA also requests input and suggestions from commenters regarding any other potential solutions to the issues. As part of the public comment process, EPA also welcomes any data on the occurrence of nitrates and/or nitrites in the distribution system, especially as it may relate to nitrification associated with the use of chloramines for disinfection.

TABLE V–5—ISSUES IDENTIFIED BY THE EPA/STATE WORKGROUP THAT FALL WITHIN THE SCOPE OF THIS NPDWR REVIEW

Implementation issue	Examples of potential solutions discussed by the workgroup
Change the location of nitrate-nitrite monitoring to address possible nitrification within the distribution system for water systems using chloramines[1]	• Location of Monitoring —Move sampling location from the entry point to the distribution to within the distribution system. —Or, maintain entry point sampling and also sample in the distribution system.

[9] The subject of the Six-Year-Review, as specified in section 1412(b)(9) of the SDWA, is "each national primary drinking water regulation," as defined under section 1401 of the SDWA.

[10] Currently, PWSs that exceed the fluoride MCL of 4.0 mg/L are required to notify their customers within 30 days of the exceedance. If a PWS exceeds the fluoride SMCL of 2.0 mg/L, they are required to notify their customers within 12 months of the exceedance. The States voiced concerns about (1) the confusion that occurs between the different PN requirements for the MCL and the SMCL, and (2) the timeliness of the PN requirement for the SMCL. The workgroup indicated that waiting 12 months to notify customers of an exceedance of the SMCL does not adequately protect young children from dental fluorosis during a critical stage of tooth enamel development. The participating States requested that EPA consider regulatory revisions to clarify the PN requirements and better reflect the health and aesthetic implications of each. EPA noted that PN requirements are not within the scope of this NPDWR review. However the Agency agreed that a fact or information sheet may be useful to clarify any confusion.

TABLE V–5—ISSUES IDENTIFIED BY THE EPA/STATE WORKGROUP THAT FALL WITHIN THE SCOPE OF THIS NPDWR REVIEW—Continued

Implementation issue	Examples of potential solutions discussed by the workgroup
Reduce the monitoring for ground water systems with historically low levels of nitrate-nitrite.	• Frequency of Monitoring —Consider sampling in conjunction with DBPs, TCR or some other scheme. • EPA notes that 40 Code of Federal Regulations (CFR) 141.23(a)(2) may allow surface water systems discretion to locate the sampling point in the distribution system if that is more representative of the source after treatment.[2] • Consider revisions to change the frequency of monitoring, the trigger level and the duration of time for systems to qualify for reduced monitoring. Examples included: —A monitoring frequency of 3, 6, or 9 years (consistent with the existing standardized monitoring framework) or some other frequency. —A new trigger level set at either ½ the MCL (or some other fraction), the PQL/MDL (or some other level of detection), or another appropriate level. —As for the duration of how long a system would need to meet the trigger level in order to be allowed to begin reduced monitoring, some options included a 3-, 6-, or 9-year period (consistent with the standardized monitoring framework) or a 5-, 10-, or 15-year period. • Or consider providing a waiver option to give States discretion to reduce monitoring. • Or consider a non-regulatory option such as the Alternative Monitoring Guidelines (which some considered too burdensome).
Revise the monitoring requirements for Non Community Water Systems (NCWS) to better target the potential health risks associated with chronic contaminants. In light of the probability and magnitude of health threats, some monitoring requirements for these systems may be insufficient, and others may be excessive.	• Revise all contaminant rules to include additional monitoring requirements for Transient Non Community Water Systems (TNCWS), as well as radionuclide monitoring requirements for Non Transient Non Community Water Systems (NTNCWS). • Or review existing regulated contaminants and include TNCWS monitoring requirements based on the relative health risk from chronic exposure. • Or develop general language that would apply to all contaminant rules, giving States the discretion to require additional monitoring for contaminants that pose chronic exposure risks and can have acute health effects at elevated levels potentially found at TNCWSs (the preferred option from States). • **Note:** For some of these options, EPA would need to evaluate whether sufficient occurrence and exposure information is available for TNCWS and NTNCWS to assess the need for revised monitoring strategies.

[1] The health effects technical review identified new information on developmental effects of nitrate and nitrite, as well as data regarding its carcinogenicity, that may indicate the need to update the Agency's risk assessment (*see* section VI.B.49 and VI.B.50 of today's action). In light of this information, EPA is considering nitrate and nitrite as potential candidates for new health effects assessments. If new assessments are initiated and completed, EPA will be able to determine the potential impacts on the MCLG, MCL, and/or monitoring requirements, and what future actions may or may not be appropriate.

[2] 40 CFR 141.23(a)(2) states: Surface water systems shall take a minimum of one sample at every entry point to the distribution system after any application of treatment or in the distribution system at a point which is representative of each source after treatment (hereafter called a sampling point) beginning in the initial compliance period. The system shall take each sample at the same sampling point unless conditions make another sampling point more representative of each source or treatment plant.

b. Other Issues (Synthetic Organic Chemicals Trigger Levels)

40 CFR 141.24(h)18 of the national primary drinking water regulations lists detection limits for the synthetic organic chemicals (SOCs), including pesticides. These detection limits serve as triggers for determining whether the compliance monitoring frequency for SOCs may be reduced; public water systems detecting SOCs at or below trigger concentration can qualify for reduced monitoring. Several Regions and States have requested guidance and clarification on the use of detection limits in monitoring of drinking water samples for SOCs. The primary concern is that some laboratories have reported difficulty in achieving the detection limits for some SOCs on a regular basis and, in those cases, the water systems that they support are not able to qualify for reduced monitoring.

EPA is seeking information about the extent and magnitude of any issues related to the ability of laboratories to achieve the SOC trigger levels specified in section 141.24(h)(18). EPA wishes to determine if this issue is widespread or limited to specific SOCs and/or specific laboratories. EPA is requesting that stakeholders provide information/data to support their concerns related to SOC triggers.

C. How Did EPA Factor Children's Health Concerns Into the Review?

The 1996 amendments to SDWA require special consideration of all sensitive populations (*e.g.,* infants, children, pregnant women, elderly, and individuals with a history of serious illness) in the development of drinking water regulations (section 1412(b)(3)(C)(V) of SDWA, as amended in 1996). As a part of the Six-Year Review 2, EPA completed a literature search covering developmental and reproductive endpoints (*e.g.,* fertility, embryo survival, developmental delays, birth defects, and endocrine effects) for regulated chemicals that have not been the subject of a health effects assessment during this review period (*see* section V.B.1 of today's action). EPA reviewed the output from the literature searches to identify any studies that might have an influence on the present MCLG. Three chemicals were identified with potential developmental/reproductive endpoints of concern that might not be addressed by the current NPDWR: Nitrate, nitrite, and selenium. In each case, where the literature search indicated a need to consider recent studies of developmental or reproductive toxicity, EPA is considering whether to nominate the contaminant for a new health effects assessment.

VI. Results of EPA's Review of NPDWRs

Table VI–1 lists EPA's review results for each of the 71 NPDWRs discussed in this section of today's action along with the principal rationale for the review outcomes. Table VI–1 also includes a list of the 14 NPDWRs that have been or are being reviewed/revised by recent or ongoing regulatory actions.

A. What Are the Review Result Categories?

For each of the 71 NPDWRs discussed in detail in the following sections of today's action, the review results in one of the following outcomes:

1. No Action at This Time and the NPDWR Is Still Appropriate

The NPDWR is appropriate and no action is necessary at this time for one of the following reasons:

a. *A health effects assessment is in process or the Agency is considering whether to initiate an assessment.* The MCL remains appropriate because either, (1) it is equal to the MCLG, (2) the MCL is based on SDWA's cost-benefit provision, (3) there is no potential to change the MCL based on changes in analytical feasibility, or (4) there may be a potential change to the MCL based on analytical feasibility, but any such change is unlikely to provide a meaningful opportunity to improve public health protection. This group includes both contaminants where an assessment is in process, and contaminants where EPA identified new health information that may warrant a new health effects assessment.

b. *NPDWR remains appropriate after data/information review.* There is no ongoing health assessment and the outcome of the review indicates that the current regulatory requirements remain appropriate and, therefore, no regulatory revisions are warranted at this time. Any new information available to the Agency either supports the current regulatory requirements or does not justify a revision.

c. *New information is available that indicates potential for a regulatory revision, but no revision recommended because:*

- Negligible gain in public health protection and/or cost savings: Any resulting changes to the NPDWR would not significantly improve the level of public health protection or result in a major cost savings for public water systems and their customers.
- Information Gaps or Emerging Information: Either new information is emerging that could affect EPA's evaluation of the NPDWR or the available data are insufficient to support a definitive regulatory recommendation at this time.

2. Candidate for Revision

The NPDWR is a candidate for revision based on the review of new information.

Table VI-1. Summary of Six-Year Review 2 Results				
Recent or Ongoing Action (14 NPDWRs)			Bromate Chloramines Chlorine Chlorine dioxide Chlorite Coliform Copper	*Cryptosporidium* *Giardia lamblia* HAA5 Lead *Legionella* TTHMs Viruses
Not Appropriate for Revision at this Time	Health effects assessment in process (as of March 1, 2009) or potential nominee for an assessment (32 NPDWRs)		Alpha particles (or emitters)[1] Antimony Arsenic Asbestos Benzo(a)pyrene[1] Beryllium Beta particles and photon emitters[1] Cadmium Carbon tetrachloride[1] Chromium Cyanide 1,2-Dichlorobenzene 1,4-Dichlorobenzene 1,2-Dichloroethane[1] cis-1,2-Dichloroethylene trans-1,2-Dichloroethylene	Dichloromethane[1] Di(2-ethylhexyl)adipate[1] Di(2-ethylhexyl)phthalate[1] Ethylbenzene Fluoride Nitrate Nitrite Pentachlorophenol[1] Polychlorinated biphenyls (PCBs)[1] Radiums[1] Selenium Styrene 2,3,7,8-TCDD (dioxin)[1] Thallium[1] 1,2,4-Trichlorobenzene Uranium
	NPDWR remains appropriate after data/information review (8 NPDWRs)		Dalapon Dinoseb Endrin Ethylene Dibromide (EDB) Mercury (inorganic)	Methoxychlor Monochlorobenzene (chlorobenzene) 2,4,5-Trichorophenoxy-propionic acid (2,4,5-TP)
	New information, but no revision recommended because:	Low priority (24 NPDWRs)	Alachlor Barium Benzene Chlordane 1,2-Dibromo-3-chloropropane (DBCP) 1,1-Dichloroethylene 1,2-Dichloropropane 2,4-Dichlorophenoxyacetic acid (2,4-D) Diquat Endothall Glyphosate	Heptachlor Heptachlor epoxide Hexachlorobenzene Hexachlorocyclopentadiene Lindane Oxamyl Picloram Toluene Toxaphene 1,1,1-Trichloroethane 1,1,2-Trichloroethane Xylenes Vinyl chloride
		Emerging information or data gaps (3 NPDWRs)	Atrazine Carbofuran	Simazine
Candidate for Revision	Based on new information (4 NPDWRs)		Acrylamide[2] Epichlorohydrin	Tetrachloroethylene (PCE)[2] Trichloroethylene (TCE)[2]

1. For these compounds, there is no potential to change the MCL based on changes in analytical feasibility or there may be a potential change to the MCL based on analytical feasibility but any such change is unlikely to provide a meaningful opportunity to improve public health protection. Therefore, EPA chose to leave these in the ongoing health assessment category.
2. Note that a health assessment is in process but new analytical feasibility and TT information may justify a revision.

B. What Are the Details of EPA's Review of Each NPDWR?

1. Acrylamide

a. *Background.* EPA published the current NPDWR for acrylamide on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR imposes a TT requirement that limits the allowable monomer levels in products used during drinking water treatment, storage, and distribution to 0.05 percent acrylamide in polyacrylamide coagulant aids, and limits the dosage of such products to a maximum of 1 mg/L (ppm). Each water system is required to certify, in writing, to the State (using third-party or manufacturer's certification) that the product used meets these residual monomers and use-level specifications.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to acrylamide. The revised health effects assessment is considering relevant studies on the toxicity of acrylamide, including its potential developmental and reproductive toxicity. The draft assessment was published in the **Federal Register** on December 28, 2007 (72 FR 73813 (USEPA, 2007b)). The Science Advisory Board (SAB) conducted a peer review of the document, which also included a review of public comments received on the draft assessment. The SAB panel concurred with the Agency's rationale and justification for acrylamide being a "likely human carcinogen" via mutagenic mechanism. At the present time, acrylamide is still under evaluation by the Agency, and the IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although there is an ongoing health effects assessment, the MCLG is zero and the current TT standard allows exposure at levels above the MCLG. Therefore, EPA reviewed whether there is potential to revise the TT for acrylamide. EPA has identified information that suggests that the residual acrylamide content in water treatment polymers has decreased significantly, likely due to improvements in manufacturing processes and technologies (USEPA, 2009g). NSF International analyses conducted between January 2005 and June 2007 found that, in 66 polyacrylamide products submitted for certification under NSF Standard 60, the median residual acrylamide content was 0.006 percent, and the 90th percentile acrylamide content was 0.025 percent, half of the limit set in the treatment technique.

Acrylamide standards in Europe and Australia are also stricter than the NPDWR. Based on the maximum allowable dosage and monomer level in the NPDWR, finished water could contain up to 0.5 µg/L (ppb) of acrylamide. By contrast, the European Union requires that finished water contain less than 0.1 µg/L (parts per billion or ppb) acrylamide, and Australia requires that the concentration in finished water be less than 0.2 µg/L (ppb). The United Kingdom requires that polyacrylamides used in drinking water contain less than 0.02 percent residual acrylamide, and that the polyacrylamide dose be less than 0.5 mg/L (parts per million or ppm) at all times, for a maximum finished water concentration of 0.1 µg/L (ppb).

To assess the occurrence of acrylamide in drinking water, EPA sought data on current usage practices for polyacrylamide coagulant aids. The Agency is not presently aware of any recent, large-scale studies of polymer usage in drinking water facilities, and therefore cannot fully characterize the occurrence of acrylamide in drinking water. However, the 1996 WATER:\STATS database (described in Levine *et al.,* 2004), based on an American Water Works Association (AWWA) survey, indicates that 13 percent of ground water systems and 66 percent of surface water systems surveyed use a polymer for water treatment. Many of these are anionic and nonionic polymers, particularly for ground water systems; anionic and nonionic polymers used to treat drinking water are most likely polyacrylamides.

Additional information on the extent of use of polyacrylamide in drinking water and the impending health effects assessment will further assist the Agency in determining the potential public health benefits associated with a revision to the treatment technique for acrylamide. Because most polyacrylamides available today have a lower residual monomer content than that specified in the current treatment technique (USEPA, 2009g), EPA believes that the costs of a revision would be minimal and recognizes that the benefits may also be small.

c. *Review Result.* The Agency believes it is appropriate to revise the NPDWR for acrylamide although a health effects assessment is currently in progress. The existing MCLG is still zero (based on the current B2 cancer classification) and NSF International data indicate that polyacrylamides are widely available with lower residual monomer levels than required by the existing NPDWR. Hence, revisions to the acrylamide NPDWR will provide a meaningful opportunity to maintain the health risk reductions achieved by technological advances in manufacturing. If the updated health effects assessment is completed in time to consider for the regulatory revision of acrylamide, the Agency will consider this final assessment in its evaluation of health benefits. As discussed in Section VII, the Agency solicits information from the public on the extent of use of polyacrylamide in drinking water facilities (since this may provide additional information on the occurrence of acrylamide in drinking water) to help inform the regulatory revision. EPA notes that any changes to the NPDWR for acrylamide may also include revisions to the closely related NPDWR for epichlorohydrin.

2. Alachlor

a. *Background.* EPA published the current NPDWR for alachlor on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* In 2006, the Agency updated its health effects assessment of alachlor (USEPA, 2006a). The Agency identified a change in this assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of alachlor including developmental and reproductive toxicity. For noncancer effects, the assessment confirmed the RfD of 0.01 mg/kg-day (milligrams per kilogram of body weight per day). The assessment also concluded that alachlor is likely to be a human carcinogen at high doses; not likely to be a human carcinogen at low doses, and that a linear dose-response extrapolation is no longer appropriate. It established a health reference value of 0.005 mg/kg-day for the nonlinear cancer assessment (USEPA, 2006a). Since the health reference value of 0.005 mg/kg-day is lower than the RfD of 0.01 mg/kg-day, the Agency used this value to calculate a possible MCLG. Based on the health reference value of 0.005 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the drinking water equivalent level (DWEL) could be 0.2 mg/L. A relative source contribution (RSC) of 20 percent results

in a possible MCLG of 0.04 mg/L (USEPA, 2009b).

Since the health review for alachlor indicates that the MCLG could possibly increase to 0.04 mg/L (from its current MCLG of zero) and because the current MCL is based on a PQL of 0.002 mg/L, neither analytical nor treatment feasibility would be a limiting factor for a possible higher level of 0.04 mg/L.

EPA evaluated the results of the occurrence and exposure analyses for alachlor to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity for cost savings to PWSs and their customers while maintaining or improving the level of public health protection (USEPA, 2009f). Review of health information for alachlor indicated that the MCLG could be increased to 0.04 mg/L from its current MCLG of zero. Consequently, the MCL of alachlor possibly can also increase to 0.04 mg/L. Although the Agency obtained and evaluated the finished water occurrence data for alachlor, its usefulness is limited for determining potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–2 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA data. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at threshold levels of interest. This information indicates that any resulting NPDWR change would affect systems that rely on source water at less than 0.4 percent of the NAWQA locations and less than 1.8 percent of the STORET locations.

TABLE VI–2—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR ALACHLOR

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	2,252 (100.0%)	9,236 (100.0%)
Nondetect	1,669 (74.1%)	8,571 (92.8%)
Detected	583 (25.9%)	665 (7.2%)
Exceeds current MCL of 0.002 mg/L	40 (1.8%)	35 (0.38%)
Exceeds alternative value of 0.04 mg/L	0 (0.0%)	1 (0.01%)

[1] STORET database 2002–2006.
[2] NAWQA database 1992–2008.
Source: USEPA, 2009d.

The BATs and small system compliance technologies for alachlor have other beneficial effects, *e.g.,* reduction of other co-occurring contaminants, precursors for disinfection byproducts (DBPs) or other common impurities. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.002 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

The Agency notes that alachlor and two of its unregulated acid degradates (alachlor ethanesulfonic acid or ESA and alachlor oxanilic acid or OA[11]) are currently listed on the second Unregulated Contaminants Monitoring Rule (UCMR 2) (72 FR 367, January 4, 2007 (USEPA, 2007e)). The Agency also listed alachlor ESA and OA on the CCL3 (74 FR 51850, October 8, 2009 (USEPA, 2009l)). Once the UCMR 2 monitoring results are available for alachlor and its degradates, the Agency will be able to more fully evaluate alachlor along with its degradates in determining how this information might impact the current regulation for alachlor and/or the need for any revised or new regulation to capture the impact from the ESA and OA degradates.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for alachlor, EPA does not believe a revision to the NPDWR for alachlor is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for alachlor is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

In addition, the Agency considers it premature to make any decision to revise the alachlor NPDWR pending the final UCMR 2 monitoring results.

3. Alpha Particle Emitters

a. *Background.* EPA published an interim NPDWR and set an MCL of 15 pCi/L for gross alpha particle activity on July 9, 1976 (41 FR 28402 (USEPA, 1976)). As noted in the August 14, 1975 proposal (40 FR 34324 (USEPA, 1975))

[11] Between 2004 and 2006, the United States Department Agriculture's Pesticide Data Program (USDA PDP) collected data for alachlor and its ESA and OA degradates from finished and untreated water samples for a limited number of water systems (USDA, 2004, 2005, and 2006). While alachlor was rarely detected (*i.e.,* 0 to 0.8 percent of the samples by year), the alachlor ESA and OA degradates were commonly detected (*i.e.,* 19 to 51 percent of the samples by year for the ESA degradate and 7 to 40 percent of the samples by year for the OA degradate). The detected values for the ESA and OA degradates ranged from 0.0028 to 0.357 µg/L and 0.001 to 0.102 µg/L, respectively. The detected values for alachlor ranged from 0.0163 to 0.043 µg/L.

and a subsequent September 30, 1986 FR notice (51 FR 34836 (USEPA, 1986a), EPA considered the feasibility of treatment techniques, analytical methods and monitoring when establishing the MCL of 15 pCi/L. EPA also considered the risks associated with other alpha particle emitters relative to radium-226, which generally fell within the Agency's acceptable risk range of 10^{-4} to 10^{-6} at the MCL of 15 pCi/L. On December 7, 2000 (65 FR 76708 (USEPA, 2000c)), EPA established an MCLG of zero based on a cancer classification of A (known human carcinogen) and finalized the NPDWR by retaining the MCL of 15 pCi/L. EPA noted in the December 7, 2000, FR notice that new risk estimates from *Federal Guidance Report 13* reaffirmed that the 15 pCi/L gross alpha particle MCL (including radium 226 but excluding uranium and radon) was appropriate and protective.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to alpha particle emitters. The revised health effects assessment will consider relevant studies on the toxicity of alpha particle emitters, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b).

Although there is an ongoing health effects assessment, the MCLG is zero and the current MCL is higher than the MCLG. Therefore, EPA reviewed whether there is potential to revise the MCL based on new information regarding analytical and treatment feasibility for gross alpha particles. EPA promulgated a detection limit of 3 pCi/L in 1976 (41 FR 28402 (USEPA, 1976)) and retained the use of a detection limit as the required measure of sensitivity for radiochemical analysis in lieu of an MDL or PQL in the final rule (65 FR 76708 (USEPA, 2000c)). EPA did not identify new analytical methods during the current review that would feasibly lower the detection limit. In addition, since the December 7, 2000, regulation, there is no new information regarding treatment feasibility. Since there is no new information regarding analytical or treatment feasibility that suggests changes to the MCL, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for gross alpha particles is appropriate at this time because a reassessment of the health risks resulting from exposure to alpha particles is in progress (USEPA, 2009b). Furthermore, there is no new information regarding analytical or treatment feasibility that would warrant reconsideration of the MCL.

4. Antimony

a. *Background.* EPA published the current NPDWR for antimony on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.006 mg/L. EPA based the MCLG on a reference dose of 0.0004 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to antimony. The revised health effects assessment will consider relevant studies on the toxicity of antimony, including its potential developmental and reproductive toxicity. The Agency does not expect the new health effects assessment to be completed in the time frame of the current Six-Year Review cycle (USEPA, 2009b). On December 21, 2007 (72 FR 72715 (USEPA, 2007c)), the Agency noted that the health effects assessment for antimony is in process.

c. *Review Result.* Since the MCL for antimony is set at its MCLG and a reassessment of the health risks resulting from exposure to antimony is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

5. Arsenic

a. *Background.* EPA published the current NPDWR for arsenic on January 22, 2001 (66 FR 6976 (USEPA, 2001c)). The NPDWR established an MCLG of zero based on a cancer classification of A, known human carcinogen. The NPDWR also established an MCL of 0.010 mg/L, which is higher than the feasible analytical level of 0.003 mg/L. EPA exercised its discretionary authority to set an MCL at a level higher than feasible (SDWA Section 1412(b)(6)), based on the finding that a final MCL of 0.010 mg/L represents the level that best maximizes health risk reduction benefits at a cost that is justified by the benefits (66 FR 6976 at 7020 (USEPA, 2001c)).

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to arsenic. In June 2007, EPA's Science Advisory Board (SAB) issued its evaluation of the Agency's 2005 draft toxicological review for inorganic arsenic (USEPA, 2007a). In its 2007 report, SAB supports the continued use of a linear cancer risk model for inorganic arsenic, noting that the available data do not describe the shape of the dose-response curve at low doses. The new health effects assessment (both cancer and noncancer) were not completed by March 1, 2009, the review cutoff date for this notice. The revised health effects assessments will consider relevant studies on the toxicity of arsenic, including its potential developmental and reproductive toxicity. The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessments.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for arsenic is appropriate at this time because a reassessment of the health risks resulting from exposure to arsenic is ongoing (USEPA, 2009b). As noted previously, the arsenic MCL is based on the SDWA cost benefit provision (Section 1412(b)(6)) and the health effects assessment is important for reviewing the benefits associated with the basis of the MCL.

6. Asbestos

a. *Background.* EPA published the current NPDWR for asbestos on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 7 million fibers/L. EPA evaluated asbestos as a Category II [12] contaminant (equivalent to Group C, possible human carcinogen) by the oral route of exposure.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to asbestos. The revised health effects assessment will consider relevant studies on the toxicity of asbestos, including its potential developmental and reproductive toxicity. The Agency does not expect the new health effects assessment to be completed in the time frame of the current Six-Year Review cycle (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for asbestos is set at its MCLG and a reassessment of the health risks resulting from exposure to asbestos is in

[12] Category II contaminants include those contaminants for which EPA has determined there is limited evidence of carcinogenicity from drinking water considering weight of evidence, pharmacokinetics, potency, and exposure. For Category II contaminants, EPA has used two approaches to set the MCLG: Either (1) setting the MCLG based upon noncarcinogenic endpoints of toxicity (the RfD) then applying an additional risk management factor of 1 to 10; or (2) setting the MCLG based upon a theoretical lifetime excess cancer risk range of 10^{-5} to 10^{-6} using a conservative mathematical extrapolation model.

progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

7. Atrazine

a. *Background.* EPA published the current NPDWR for atrazine on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.003 mg/L. EPA based the MCLG on a reference dose of 0.005 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* In 2006, the Agency finalized a health effects assessment for the reregistration of atrazine as a pesticide (USEPA, 2006c). This assessment examined an extensive toxicology database and included investigation of atrazine's neuroendocrine mode of action and related reproductive and developmental effects. The assessment established a new RfD of 0.018 mg/kg-day, based on attenuation of pre-ovulatory luteinizing hormone (LH) surge, a key event indicative of hypothalamic function disruption. In accordance with the *1999 Interim Guidelines for Carcinogen Risk Assessment,* EPA's Cancer Assessment Review Committee (CARC) classified atrazine as "not likely to be carcinogenic to humans" because the tumor response in the Sprague-Dawley rats was determined to be a strain specific mechanism which is not relevant to humans.

c. *Review Result.* The Agency believes it is not appropriate to consider revisions to the NPDWR for atrazine at this time and has place atrazine in the emerging information/data gap category because of an impending re-evaluation of the Agency's risk assessment for atrazine. On October 7, 2009,[13] the Agency announced its intent to launch a comprehensive new evaluation of the atrazine to determine its effects on humans. At the end of this process, the Agency will decide whether to revise its current risk assessment for atrazine and whether new restrictions are necessary to better protect public health. EPA will evaluate the pesticide's potential cancer and non-cancer effects on humans. Included in this new evaluation will be the most recent studies on atrazine and its potential association with birth defects, low birth weight, and premature births. Our examination of atrazine will be based on transparency and sound science, including independent scientific peer review and will help determine whether a change in EPA's regulatory position on this pesticide is appropriate.

8. Barium

a. *Background.* EPA published the current NPDWR for barium on July 1, 1991 (56 FR 30266 (USEPA, 1991b)). The NPDWR established an MCLG and an MCL of 2 mg/L. EPA based the MCLG on a reference dose of 0.07 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity via the oral route.

b. *Technical Reviews.* In 2005, the Agency updated the health effects assessment of barium and revised the RfD from 0.07 mg/kg-day to 0.2 mg/kg-day (USEPA, 2005a). The change in the RfD could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of barium including developmental and reproductive toxicity. The assessment concluded that barium is not likely to be carcinogenic to humans (USEPA, 2005a). Based on the new IRIS assessment and RfD of 0.2 mg/kg-day, and assuming 70 kg body weight and 2 liters water intake per day, the DWEL could be 7.0 mg/L. An RSC of 80 percent [14] results in a possible MCLG of 6.0 mg/L.

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the results of the occurrence and exposure analyses for barium to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for barium, its usefulness is limited for determining potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–3 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA data. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at threshold levels of interest. This information indicates that any resulting NPDWR change would affect systems that rely on source water at less than 0.1 percent of the NAWQA locations and less than 1.4 percent of the STORET locations.

TABLE VI–3—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR BARIUM

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	16,595 (100.0%)	4,864 (100.0%)
Nondetect	2,299 (13.9%)	43 (0.9%)
Detected	14,296 (86.1%)	4,821 (99.1%)
Exceeds current MCL/MCLG of 2.0 mg/L	234 (1.4%)	3 (0.1%)
Exceeds alternative value of 6.0 mg/L	163 (1.0%)	0 (0.0%)

[1] STORET database 2002–2006.
[2] NAWQA database 1992–2008.
Source: USEPA, 2009d.

[13] Additional information is available at *http://www.epa.gov/pesticides/reregistration/atrazine/atrazine_update.htm.*

[14] The present MCLG for barium does not include an RSC because the dose used in the calculation applied to only the dose from the drinking water. If a new MCLG were to be developed from the animal data that support the 2005 IRIS RfD, an RSC would be required. Regulations or guidelines pertaining to barium from media other than water were not identified. Barium metaborate is a registered pesticide but it does not have any food uses and does not have a human health ambient water quality guideline value. EPA used the subtraction calculation method to determine the possible RSC of 80 percent for drinking water (the ceiling on RSC specified by the methodology).

The BATs and small system compliance technologies for barium have other beneficial effects, *e.g.,* reduction of other co-occurring contaminants or other common impurities. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 2 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for barium, EPA does not believe a revision to the NPDWR for barium is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for barium is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

9. Benzene

a. *Background.* EPA published the current NPDWR for benzene on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG of zero based on a cancer classification of A, known human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* In 2000 and 2003, the Agency updated the IRIS assessment of benzene. The cancer assessment was completed first and characterized benzene as a known human carcinogen by all routes of exposure; the one-in-a million risk estimates for cancer by the oral route of exposure ranged from 1 µg/L to 10 µg/L (USEPA, 2000b). This cancer assessment was also noted in the first Six-Year Review (67 FR 19030, April 17, 2002 (USEPA, 2002c)). As part of the Six-Year Review process, the Agency's Office of Water (OW) conducted a literature search through June 2007 for relevant data on the carcinogenicity of benzene as well as its potential developmental and reproductive toxicity (USEPA, 2009b). While the literature search did identify several new studies that evaluated the cancer and noncancer effects of benzene, none of the new studies would affect the cancer classification, which serves as the basis for the MCLG of zero. A recent occupational study (Lan *et al.,* 2004) of the noncancer effects of benzene identified hematological effects in workers at levels below those previously reported. The Agency for Toxic Substances and Disease Registry (ATSDR) (2007) chronic minimum risk level based on the Lan *et al.* (2004) data of 0.0005 mg/kg/day is lower than the IRIS RfD of 0.004 mg/kg/day. If the ATSDR minimum risk level were used as the basis for a noncancer health reference level, the value would be 0.004 mg/l, a value that is slightly below the current MCL. Because the MCLG remains at zero, the Agency believes that a further review of the health effects of benzene is not warranted at this time.

The current MCL for benzene is based on a PQL of 0.005 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of benzene might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for benzene are above 95 percent around the current PQL of 0.005 mg/L, including two studies with true values below the current PQL. All passing rates in the PE data exceeded 75 percent. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 90 percent passing rates for studies around the PQL, including eight with true values below the current PQL. Because most of the laboratory passing rates from PE and PT studies exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for benzene might be possible. These results, however, are insufficient to recalculate a revised PQL for benzene because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of benzene (Methods 502.2 and 524.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 139,190 samples. More than 80 percent of these values are less than or equal the modal MRL, 120,308 (86 percent) equal the modal MRL of 0.0005 mg/L, and an additional 17,964 (13 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range from 0.00001 to 0.0004 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0001 to 0.004 mg/L, which contains the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for benzene. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of benzene at the EQL of 0.0005 mg/L and additional thresholds of 0.001, and 0.0025 mg/L (USEPA, 2009f). Table VI–4 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The Six-Year Review ICR occurrence data have a modal MRL of 0.0005 mg/L, which limits reliable contaminant detection to 0.0005 mg/L. As indicated, average concentrations exceed the current MCL for 10 of 50,435 systems (0.020 percent) serving 14,000 people (or 0.006 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; Safe Drinking Water Information System/Federal version (SDWIS/FED) indicates 41 MCL violations for benzene between 1998 and 2005, with annual violations ranging from 1 to 12 (USEPA, 2007g). The occurrence and exposure analysis shows that average concentrations at 95 to 123 of 50,435 systems (0.188 to 0.244 percent), serving 304,000 to 485,000 people (or 0.134 to 0.214 percent of 227

million people), exceed the EQL of 0.0005 mg/L.

TABLE VI–4—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING BENZENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 50,435 systems with benzene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	10 (0.020%)	10 (0.020%)	10 (0.020%)
½ MCL (0.0025 mg/L)	16 (0.032%)	14 (0.028%)	14 (0.028%)
2xEQL (0.001 mg/L)	70 (0.139%)	58 (0.115%)	52 (0.103%)
EQL (0.0005 mg/L)	not applicable	123 (0.244%)	95 (0.188%)
Regulatory or feasibility-based threshold	Corresponding population served (Percentages based on 226,947,000 people served by the systems with benzene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	14,000 (0.006%)	14,000 (0.006%)	14,000 (0.006%)
½ MCL (0.0025 mg/L)	111,000 (0.049%)	110,000 (0.048%)	110,000 (0.048%)
2xEQL (0.001 mg/L)	180,000 (0.079%)	159,000 (0.070%)	158,000 (0.070%)
EQL (0.0005 mg/L)	not applicable	485,000 (0.214%)	304,000 (0.134%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for benzene is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

10. Benzo(a)pyrene

a. *Background.* EPA published the current NPDWR for benzo(a)pyrene on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.0002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to benzo(a)pyrene. The revised health effects assessment will consider relevant studies on the toxicity of benzo(a)pyrene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although a risk assessment is in process for benzo(a)pyrene, the existing MCLG is zero and the current MCL of 0.0002 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for benzo(a)pyrene are all above 75 percent. However, the true concentrations were all higher than the current PQL of 0.0002 mg/L. More recent PT data from late 1999 through 2004, supplied by a PT provider, show several true concentrations with passing rates less than the 75 percent criterion typically used to derive a PQL. All of the true concentrations in the PT data were higher than the current PQL. Given the variability in passing rates and the lack of data points below the current PQL, a lowering of the PQL for benzo(a)pyrene is not appropriate at this time (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of benzo(a)pyrene (Methods 550, 550.1, and 525.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 55,487 samples. Fewer than 80 percent of these values are less than or equal the modal MRL, 29,769 (54 percent) equal the modal MRL of 0.00002 mg/L and an additional 970 (2 percent) are lower

than 0.00002 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.000016, 0.000029, and 0.00023 mg/L. EPA selected the median value, applied a multiplier of 10, and rounded up to 0.0003 mg/L. The result is higher than the current PQL and, therefore, EPA did not estimate an EQL (USEPA, 2009e). Based on these varied and unrelated approaches/sources of information, EPA believes that there is no potential to lower the PQL for benzo(a)pyrene. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for benzo(a)pyrene is appropriate at this time because a reassessment of the health risks resulting from exposure to benzo(a)pyrene is in progress (USEPA, 2009b). Furthermore, a review of analytical feasibility did not identify a potential to revise the MCL, which is limited by feasibility.

11. Beryllium

a. *Background.* EPA published the current NPDWR for beryllium on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.004 mg/L. EPA classified beryllium in Group B2, probable human carcinogen, based on clear evidence of its carcinogenicity via inhalation or injection in several animal species. However, EPA also placed beryllium in drinking water Category II for regulation, based on the weight of evidence for carcinogenicity via ingestion, and the potency, exposure and pharmacokinetics of this chemical. EPA derived the MCLG by applying an additional risk management factor of 10 to the RfD of 0.005 mg/kg-day (57 FR 31776 at 31785, July 17, 1992 (USEPA, 1992)).

b. *Technical Reviews.* As noted in Six Year Review 1 (68 FR 42908, USEPA, 2003e), EPA updated its assessment of the health risks resulting from exposure to beryllium in 1998 (USEPA, 1998c). The 1998 IRIS assessment uses the 1986 EPA cancer guidelines (USEPA, 1986b) and classifies beryllium as Group B1, probable human carcinogen, via inhalation route. However, the 1998 IRIS assessment states that the database is inadequate for assessing the carcinogenicity of ingested beryllium and concluded that the human carcinogenic potential of ingested beryllium cannot be determined. The Agency considered the 1998 assessessment in Six Year Review 1 and decided that it was not appropriate to revise the NPDWR at that time. EPA has initiated a reassessment of the health risks resulting from exposure to beryllium. The new assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for beryllium is set at its MCLG and a reassessment of the health risks resulting from exposure to beryllium is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

12. Beta Particle and Photon Emitters

a. *Background.* EPA published an interim NPDWR and set an MCL of 4 millirems/yr (mrem/yr) for beta particle and photon emitters on July 9, 1976 (41 FR 28402 (USEPA, 1976)). As noted in the August 14, 1975 proposal (40 FR 34324 (USEPA, 1975)) and a subsequent September 30, 1986 FR (51 FR 34836 (USEPA, 1986a) advanced notice of proposed rulemaking, EPA considered the feasibility of treatment techniques, analytical methods and monitoring when establishing the MCL of 4 mrem/yr. EPA also considered the risks associated with beta particle and photon emitters, which generally fell within the Agency's acceptable risk range of 10^{-4} to 10^{-6} at the MCL of 4 mrem/yr. On December 7, 2000 (65 FR 76708 (USEPA, 2000c)), EPA established an MCLG of zero based on a cancer classification of A (known human carcinogen) and finalized the NPDWR by retaining the MCL of 4 mrem/yr. EPA noted in the December 7, 2000, FR notice that new risk estimates from Federal Guidance Report 13 reaffirmed that the 4 mrem/yr MCL was appropriate and protective[15].

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to beta particles. The revised health effects assessment will consider relevant studies on the toxicity of beta particles, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b).

Although there is an ongoing health effects assessment, the MCLG is zero and the current MCL is higher than the MCLG. Therefore, EPA reviewed whether there is potential to revise the MCL based on new information available regarding the analytical and treatment feasibility for beta particle and photon emitters. EPA promulgated the MCL of 4 mrem/yr for man-made beta particle and photon emitters (present in any combination) in 1976 (41 FR 28402 (USEPA, 1976)) and retained the use of the detection limit as the required measure of sensitivity in the December 2000 final rule (65 FR 76708 (USEPA, 2000c)). The original rule estimated a risk ceiling of 5.6×10^{-5} for whole body doses. Limits were set in picoCurie units for each nuclide equivalent to a 4 mrem dose. The newer dosimetry found in Federal Guidance13 and reported in the December 2000 final rule reveals more exact risks that are still within the Agency's acceptable limits. While individual dose estimates changed over time, the overall limit of 4 mrem was retained along with a two-tiered screening level to avoid analyzing each possible nuclide below the screen, and still be protective. EPA did not identify new analytical methods during the current review that would feasibly lower the detection limits for beta particle and photon emitters. In addition, since the December 7, 2000 regulation, there is no new information regarding treatment feasibility. Since there is no new information regarding analytical or treatment feasibility that suggests changes to the MCL, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for beta particles is appropriate at this time because a reassessment of the health risks resulting from exposure to beta particles is in progress (USEPA, 2009b). Furthermore, there is no new information regarding analytical or treatment feasibility that would warrant reconsideration of the MCL.

13. Cadmium

a. *Background.* EPA published the current NPDWR for cadmium on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.005 mg/L. Because of inadequate dose-response data to characterize the presence or lack of a carcinogenic hazard from oral

[15] After the December 7, 2000, final regulation, two trade associations and several municipal water systems challenged EPA's standard for the beta photon emitters by claiming that the Agency did not use the best available science when finalizing the standard. In February of 2003, the District of Columbia (DC) Circuit Court of Appeals upheld EPA's regulation for beta and photon emitters (as well as radium 226 and 228 and uranium). In July, 2004, the DC Circuit Court of Appeals also upheld the policy and scientific basis of EPA's application of the beta particle and photon (man-made) drinking water standards to the ground water protection standards used for Yucca Mountain under 40 CFR part 197 (66 FR 32073, June 13, 2001 (USEPA, 2001d)).

exposure, the Agency classified cadmium as a Group D carcinogen, not classifiable as to human carcinogenicity by the oral route of exposure. Therefore, EPA developed the MCLG for cadmium based on the RfD of 0.0005 mg/kg-day.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to cadmium. The revised health effects assessment will consider relevant studies on the toxicity of cadmium, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for cadmium is set at its MCLG and a reassessment of the health risks resulting from exposure to cadmium is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

14. Carbofuran

a. *Background.* EPA published the current NPDWR for carbofuran on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.04 mg/L. EPA based the MCLG on a reference dose of 0.005 mg/kg-day and a cancer classification of E, evidence of non-carcinogenicity for humans.

b. *Technical Reviews.* In 2006, the Agency updated health effects assessment of carbofuran. The Agency identified a change in this assessment that could lead to a change in the MCLG (73 FR 44864, July 31, 2008 (USEPA, 2008a)). This assessment considered relevant studies on the toxicity of carbofuran including developmental and reproductive toxicity. The assessment revised the RfD from 0.005 mg/kg-day to an acute RfD of 0.00006 mg/kg-day and concluded that carbofuran is not likely to be carcinogenic to humans (USEPA, 2006d). Based on the revised acute RfD of 0.00006 mg/kg-day, and assuming 10 kg body weight and 1 liter water intake per day for a child, the resulting DWEL would be 0.0006 mg/L. Using an RSC of 20 percent, a possible new MCLG would be 0.00012 mg/L. The default RSC value of 20 percent was selected because of the significant exposures resulting from actual food dietary exposure for children from 1 to 6 years old, which approaches 100 percent of the updated RfD (USEPA, 2006d).

Two recent Agency actions may affect carbofuran presence in food and water sources. In May 2009, EPA revoked all tolerances (maximum residue limits) for carbofuran, which could prohibit all carbofuran residues on food, effective December 31, 2009 (74 FR 23046, May 15, 2009 (USEPA, 2009i)). The registrant and interested parties raised objections and requested a hearing on the tolerance revocations. EPA has reviewed the submissions and determined that a hearing was not warranted. Revoking carbofuran tolerances is part of a broader series of Agency actions to cancel all uses of carbofuran in the United States due to dietary, occupational, and ecological risks of concern. Following resolution of the current ongoing administrative process for resolving the safety of the tolerances, EPA will proceed to cancel the remaining uses of carbofuran.

In addition, prior to the tolerance revocation, the registrant, FMC Corporation, voluntarily cancelled 22 uses of carbofuran (74 FR 11551, March 18, 2009 (USEPA, 2009j)). Existing stocks of carbofuran can be applied to food crops until December 31, 2009, and to non-food crops according to the label until supplies are depleted. These decisions are expected to reduce exposure to carbofuran and its metabolite (3-hydroxycarbofuran) in food products and in water, which would affect the RSC used to derive a possible MCLG. Therefore, EPA believes that it should factor in the effect of these actions, once completed, before the Agency determines the potential for an NPDWR revision.

The occurrence of carbofuran in drinking water is an additional source of uncertainty in the review process that is compounded by the recent voluntary cancellations and tolerance revocations. The Six-Year Review ICR occurrence data are based on the Standardized Monitoring Framework for synthetic organic compounds, which is designed to evaluate long-term exposure to contaminants with chronic exposure health endpoints. As a result, short-term seasonal peaks, which correspond to carbofuran application as a pesticide, cannot be readily detected in this dataset. The cancellation will reduce carbofuran application and the potential for seasonal peaks to occur. Reductions in overall carbofuran use is expected to reduce the potential occurrence of carbofuran in drinking water sources.

c. *Review Result.* Although there are new health data that support consideration of whether to revise the MCLG/MCL for carbofuran, the ongoing regulatory actions could affect the possible MCLG. Therefore, EPA is placing carbofuran in the information gap category due to the uncertainty of how the cancellation impacts the MCLG. In addition, EPA notes that the decision to cancel the reregistration of carbofuran would reduce the presence of this compound in the environment and the likelihood of exposure to carbofuran in food and drinking water sources. Consequently, EPA believes it is not appropriate to consider any revisions to the NPDWR for carbofuran at this time.

15. Carbon Tetrachloride

a. *Background.* EPA published the current NPDWR for carbon tetrachloride on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to carbon tetrachloride. The revised health effects assessment will consider relevant studies on the toxicity of carbon tetrachloride, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although a risk assessment is in process for carbon tetrachloride, the existing MCLG is zero and the current MCL of 0.005 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for carbon tetrachloride are at or above 95 percent around the current PQL of 0.005 mg/L, including one study with a true value below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 90 percent passing rates for studies around the PQL, except for one study with a passing rate of 85 percent. Nine PT studies had true values below the current PQL. Because most of the laboratory passing rates from PE and PT studies exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for carbon tetrachloride might be possible. These

results, however, are insufficient to recalculate a revised PQL for carbon tetrachloride because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of carbon tetrachloride (Methods 502.2, 524.2, and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 139,221 samples. More than 80 percent of these values are less than or equal the modal MRL: 119,849 (86 percent) equal the modal MRL of 0.0005 mg/L and an additional 16,195 (12 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range from 0.000002 to 0.00021 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.00002 to 0.0021 mg/L, which contains the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for carbon tetrachloride. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of carbon tetrachloride at the EQL of 0.0005 mg/L and additional thresholds of 0.001 and 0.0025 mg/L (USEPA, 2009f). Table VI–5 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for five of 50,446 systems (0.010 percent), serving fewer than 2,000 people (or 0.001 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates 19 MCL violations for carbon tetrachloride between 1998 and 2005 with annual violations ranging from 1 to 4 (USEPA, 2007g). Average concentrations for 84 to 118 of 50,446 systems (0.167 to 0.234 percent), serving 368,000 to 750,000 people (or 0.162 to 0.330 percent of 227 million people), exceed the EQL of 0.0005 mg/L.

TABLE VI–5—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING CARBON TETRACHLORIDE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean Concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 50,446 systems with carbon tetrachloride data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL[1]	Nondetect values = ½ MRL[2]	Nondetect values = 0[3]
MCL (0.005 mg/L)	5 (0.010%)	5 (0.010%)	5 (0.010%)
½ MCL (0.0025 mg/L)	13 (0.026%)	12 (0.024%)	12 (0.024%)
2xEQL (0.001 mg/L)	59 (0.117%)	50 (0.099%)	40 (0.079%)
EQL (0.0005 mg/L)	not applicable	118 (0.234%)	84 (0.167%)
Regulatory or feasibility-based threshold	Corresponding population served (Percentages based on 226,935,000 people served by the systems with carbon tetrachloride data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL[1]	Nondetect values = ½ MRL[2]	Nondetect values = 0[3]
MCL (0.005 mg/L)	1,800 (0.001%)	1,700 (0.001%)	1,700 (0.001%)
½ MCL (0.0025 mg/L)	5,800 (0.003%)	5,500 (0.002%)	5,500 (0.002%)
2xEQL (0.001 mg/L)	265,000 (0.117%)	212,000 (0.093%)	190,000 (0.084%)
EQL (0.0005 mg/L)	not applicable	750,000 (0.330%)	368,000(0.162%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for carbon tetrachloride is appropriate at this time because a reassessment of the health risks resulting from exposure to carbon tetrachloride is in progress (USEPA, 2009b). Furthermore, the occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. After consideration of the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

16. Chlordane

a. *Background.* EPA published the current NPDWR for chlordane on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of chlordane as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for chlordane at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of chlordane is not warranted at this time.

The current MCL for chlordane is based on a PQL of 0.002 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of chlordane might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for chlordane are above 80 percent around the current PQL of 0.002 mg/L, including three studies with true values below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 80 percent passing rates, except for two studies with passing rates equal to or below 75 percent. There are no PT studies with true values below the PQL. Because most of the laboratory passing rates from PE and PT studies—including three below the PQL—exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for chlordane might be possible. These results, however, are insufficient to recalculate a revised PQL for chlordane because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of chlordane (Methods 505 and 508). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 57,506 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 26,893 (47 percent) equal the modal MRL of 0.0002 mg/L and an additional 9,764 (17 percent) are lower than 0.0002 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.0000041 and 0.00014 mg/L. Applying a multiplier of 10 would give possible PQLs of 0.000041 and 0.0014 mg/L. EPA took the mean of the two values and, rounded up to 0.001 mg/L for the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for chlordane. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of chlordane at the EQL of 0.001 mg/L (USEPA, 2009f). Table VI–6 shows the results of the occurrence and exposure analysis for the current MCL and an EQL. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for one of 31,841 systems (0.003 percent) serving 80 people (or 0.00004 percent of 182 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates no MCL violations for chlordane between 1998 and 2005 (USEPA, 2007g). Average concentrations at one to two of 31,841 systems (0.003 to 0.006 percent), still serving approximately 80 to 120 people (or 0.00004 to 0.00007 percent of 182 million people), exceed the EQL of 0.001 mg/L.

TABLE VI–6—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING CHLORDANE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 31,841 systems with chlordane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect Values = MRL [1]	Nondetect Values = ½ MRL [2]	Nondetect Values = 0 [3]
MCL (0.002 mg/L)	1 (0.003%)	1 (0.003%)	1 (0.003%)
EQL (0.001 mg/L)	2 (0.006%)	2 (0.006%)	1 (0.003%)
Regulatory or feasibility-based threshold	Nondetect Values = MRL [1]	Nondetect Values = ½ MRL [2]	Nondetect Values = 0 [3]
MCL (0.002 mg/L)	80 (0.00004%)	80 (0.00004%)	80 (0.00004%)
EQL (0.001 mg/L)	120 (0.00007%)	120 (0.00007%)	80 (0.00004%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to 1/2 MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for chlordane is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a

meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

17. Chromium

a. *Background.* EPA published the current NPDWR for total chromium on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.1 mg/L. Although the NPDWR regulates total chromium, the adverse health effects associated with hexavalent chromium (Cr VI) are the basis of the current MCLG because that is the more toxic species (56 FR 3526, January 31, 1991 (USEPA, 1991a)). EPA based the MCLG on an RfD of 0.005 mg/kg-day and an assumed RSC from water of 70 percent for total chromium. EPA regulated chromium as a Group D carcinogen, not classifiable as to human carcinogenicity by the oral route of exposure.

b. *Technical Reviews.* The health effects technical review identified some information regarding the carcinogenicity of chromium that may indicate the need to update the Agency's health effects assessment (USEPA, 2009b). In 1998, the Agency (USEPA, 1998d) updated the IRIS assessment for Cr VI, which revised the RfD from 0.0048 mg/kg-day (rounded to 0.005) to 0.003 mg/kg-day. While both RfDs are based on the same one-year drinking water rat study (MacKenzie *et al.,* 1958), the change in the RfD in 1998 was due to the following factors: (a) A slight change in the no-observed-adverse-effect level (NOAEL), (b) a modification to the original uncertainty factor, and (c) the addition of a modifying factor of three because of data on the potential for gastrointestinal effects in humans as a result of oral exposure. There is no current RfD for soluble trivalent chromium (soluble Cr III); the Cr III RfD of 1.5 mg/kg-day on IRIS (USEPA, 1998e) is for insoluble Cr III salts.

In 2002 and as part of the first Six Year Review (67 FR 19030 (USEPA, 2002c)), EPA noted that the National Toxicology Program (NTP) had agreed to study the chronic toxicity and carcinogenicity of oral exposure to Cr VI. The NTP study, conducted with sodium dichromate dehydrate (*i.e.,* Cr VI) in rats and mice, is now available (NTP, 2008), as is a pre-peer review draft of a similar study with chromium picolinate (Cr III) (NTP, 2007). The Cr VI study found clear evidence of carcinogenic activity of sodium dichromate dihydrate in male and female F344 rats based on increased incidences of squamous cell neoplasms of the oral cavity, specifically the squamous epithelium that lines the oral mucosa and tongue (NTP, 2008). NTP also concluded that there was clear evidence of carcinogenic activity of sodium dichromate dihydrate in male and female B6C3F1 mice based on increased incidences of neoplasms in the small intestine (adenomas and/or carcinomas of the duodenum, jejunum, or ileum). The observed noncancer effects in the Cr VI study included histiocytic cellular infiltration in the liver, small intestine, and pancreatic and mesenteric lymph nodes of rats and mice, and diffuse epithelial hyperplasia in the small intestine of male and female mice. A peer-reviewed report for the study of chromium picolinate (Cr III) is not yet available. Zhang and Li (1987) evaluated the effects of human exposure to Cr VI in drinking water in Chinese villages. In a recent analysis of the human data originally reported in these Chinese villages, Sedman *et al.* (2006) further support a statistically significant increase in stomach cancer in the population exposed to Cr VI in their drinking water, thus suggesting a potential for carcinogenicity of Cr VI in drinking water.

An assessment for chromium VI currently exists on IRIS but does not include an evaluation of carcinogenicity via oral ingestion. As a result, on December 21, 2007 (72 FR 72715 (USEPA, 2007c)), the Agency nominated and included Cr VI on its 2008 IRIS agenda. The Agency is currently working with California EPA, New Jersey Department of Environmental Protection, and the Centers for Disease Control ATSDR (since they have recently developed draft assessments for chromium VI) and has posted a schedule for completion and the most up-to-date information on the status of the health effects assessment on the IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*).

A review of analytical or treatment feasibility is not necessary for total chromium because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the total chromium NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for total chromium is appropriate at this time. A reassessment of the health risks associated with chromium exposure is being initiated and the Agency does not believe it is appropriate to revise the NPDWR while that effort is in process.

18. Cyanide

a. *Background.* EPA published the current NPDWR for cyanide on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.2 mg/L. EPA based the MCLG on a reference dose of 0.02 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity. During the first Six-Year Review cycle, EPA recommended a revision to the BATs for cyanide to clarify that "chlorine" should be "alkaline chlorine" to avoid potential for the formation of harmful cyanogen chloride. EPA promulgated that revision in 69 FR 38850, June 29, 2004 (USEPA, 2004b).

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to cyanide. The revised health effects assessment will consider relevant studies on the toxicity of cyanide, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.[16]

c. *Review Result.* Since the MCL for cyanide is set at its MCLG and a reassessment of the health risks resulting from exposure to cyanide is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

19. 2,4-D (2,4-Dichlorophenoxyacetic acid)

a. *Background.* EPA published the current NPDWR for 2,4-D on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.07 mg/L. EPA based the MCLG on a reference dose of 0.01 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2005, the Agency updated its health effects assessment of 2,4-D (USEPA, 2005c). The Agency identified a change in this

[16] Note that cyanide is listed as hydrogen cyanide in the IRIS tracking system.

assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of 2,4-D including developmental and reproductive toxicity. The assessment revised the RfD from 0.01 mg/kg-day to 0.005 mg/kg-day and concluded that 2,4-D is not classifiable as to its carcinogenicity (USEPA, 2005c). Based on the new Office of Pesticide Programs (OPP) assessment and RfD of 0.005 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 0.2 mg/L. An RSC of 20 percent results in a possible MCLG of 0.04 mg/L (USEPA, 2009b).

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor for the possible MCLG decrease under consideration. EPA evaluated the results of the occurrence and exposure analyses for 2,4-D to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to improve the level of public health protection (USEPA, 2009f). Table VI–7 shows the results of the occurrence and exposure analysis for the current MCL and the possible MCLG set equal to 0.04 mg/L based on the new health effects information. The occurrence and exposure analysis shows that average concentrations do not exceed the current MCL for any system in the analysis. Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates no MCL violations for 2,4-D between 1998 and 2005 (USEPA, 2007g). The occurrence and exposure analysis shows that average concentrations do not exceed the possible MCLG based on new health effects information (0.04 mg/L).

TABLE VI–7—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING 2,4-D THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with mean concentrations that are greater than the regulatory or health-based threshold (Percentages based on 33,187 systems with 2,4-D data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.07 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (0.04 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Regulatory or health-based threshold	Corresponding population served (Percentages based on 187,451,200 people served by the systems with 2,4–D data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.07 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (0.04 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for 2,4-D, EPA does not believe a revision to the NPDWR for 2,4-D is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for 2,4-D is likely to provide a meaningful opportunity for health risk reductions. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

20. Dalapon (2,2-Dichloropropionic Acid)

a. *Background.* EPA published the current NPDWR for dalapon on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.2 mg/L. EPA based the MCLG on a reference dose of 0.03 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of dalapon, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

A review of analytical or treatment feasibility is not necessary for dalapon because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the dalapon NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the dalapon NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

21. Di(2-ethylhexyl)adipate (DEHA)

a. *Background.* EPA published the current NPDWR for DEHA on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.4 mg/L. EPA based the MCLG on a reference dose of 0.6 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to DEHA. The revised health effects assessment will consider relevant studies on the toxicity of DEHA, including its potential

developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for DEHA is set at its MCLG and a reassessment of the health risks resulting from exposure to DEHA is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

22. Di(2-ethylhexyl)phthalate (DEHP)

a. *Background.* EPA published the current NPDWR for DEHP on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.006 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to DEHP. The revised health effects assessment will consider relevant studies on the toxicity of DEHP, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although a risk assessment is in process for DEHP, the existing MCLG is zero and the current MCL of 0.006 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for DEHP are below 75 percent for several concentrations around the current PQL, including two studies with true values below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, show passing rates below the 75 percent criterion for three studies, and all of the true concentrations in the PT data were higher than the current PQL. Given the passing rates around the current PQL, a lowering of the PQL for DEHP is not appropriate at this time (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of DEHP (Methods 525.2 and 506). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 50,490 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 22,980 (45 percent) equal the modal MRL of 0.001 mg/L and an additional 15,842 (31 percent) are lower than 0.001 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.0013 and 0.00225 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.013 to 0.0225 mg/L. The range is higher than the current PQL and, therefore, EPA did not estimate an EQL (USEPA, 2009e). Based on these varied and unrelated approaches/sources of information, EPA believes that there is no potential to lower the PQL for DEHP. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for DEHP is appropriate at this time because a reassessment of the health risks resulting from exposure to DEHP is in progress (USEPA, 2009b). Furthermore, a review of analytical feasibility did not identify a potential to revise the MCL, which is limited by feasibility.

23. 1,2-Dibromo-3-chloropropane (DBCP)

a. *Background.* EPA published the current NPDWR for DBCP on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.0002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of DBCP as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for DBCP at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of DBCP is not warranted at this time.

The current MCL for DBCP is based on a PQL of 0.0002 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of DBCP might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for DBCP are above 85 percent, including one study with a true value below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 75 percent passing rates, including three with a true value below the current PQL. Because all of the laboratory passing rates from PE and PT studies, including four with true values slightly below the PQL, exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for DBCP might be possible. These results, however, are insufficient to recalculate a revised PQL for DBCP because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA examined two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of DBCP (Methods 504.1 and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. However, there are substantial uncertainties in interpreting the MRLs (USEPA, 2009e). For example, some States have reported modal MRLs that are higher than the MCL. EPA therefore considered only MDL data to verify the potential to revise the PQL, and to establish a threshold for the occurrence and exposure analysis. The MDLs of approved methods are 0.000009 and 0.00001 mg/L. Applying a multiplier of 10 would give a possible PQLs of 0.00009 and 0.0001 mg/L. EPA took the mean and rounded up to 0.0001 mg/L for the EQL (USEPA, 2009e).

Based on the PT data and the MDLs for approved methods, EPA believes that there may be potential to lower the PQL for DBCP. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve

public health protection, EPA evaluated the occurrence of DBCP at the EQL of 0.0001 mg/L (USEPA, 2009f). Table VI–8 shows the results of the occurrence and exposure analysis for the current MCL and an EQL. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for 42 of 37,618 systems (0.112 percent) serving 25,000 people (or 0.013 percent of 194 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates only nine MCL violations for DBCP between 1998 and 2005 (USEPA, 2007g). Average concentrations at 92 to 97 of 37,618 systems (0.245 to 0.258 percent), serving approximately 1.2 to 1.4 million people (0.610 to 0.713 percent of 194 million people), exceed the EQL of 0.0001 mg/L.

TABLE VI–8—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING DBCP THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 37,618 systems with DBCP data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.0002 mg/L)	42 (0.112%)	42 (0.112%)	42 (0.112%)
EQL (0.0001 mg/L)	97 (0.258%)	93 (0.247%)	92 (0.245%)
Regulatory or feasibility-based threshold	Corresponding population served (Percentages based on 193,749,000 people served by the systems with DBCP data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.0002 mg/L)	25,000 (0.013%)	25,000 (0.013%)	25,000 (0.013%)
EQL (0.0001 mg/L)	1,382,000 (0.713%)	1,371,000 (0.707%)	1,181,000 (0.610%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for DBCP is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

24. 1,2-Dichlorobenzene (o-Dichlorobenzene)

a. *Background.* EPA published the current NPDWR for 1,2-dichlorobenzene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.6 mg/L. EPA based the MCLG on a reference dose of 0.09 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to 1,2-dichlorobenzene. The revised health effects assessment will consider relevant studies on the toxicity of 1,2-dichlorobenzene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for 1,2-dichlorobenzene is set at its MCLG and a reassessment of the health risks resulting from exposure to 1,2-dichlorobenzene is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

25. 1,4-Dichlorobenzene (p-Dichlorobenzene)

a. *Background.* EPA published the current NPDWR for 1,4-dichlorobenzene on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG and an MCL of 0.075 mg/L. EPA based the MCLG on a reference dose of 0.1 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to 1,4-dichlorobenzene. The revised health effects assessment will consider relevant studies on the toxicity of 1,4-dichlorobenzene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for 1,4-dichlorobenzene is set at its MCLG and a reassessment of the health risks resulting from exposure to 1,4-

dichlorobenzene is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

26. 1,2-Dichloroethane (Ethylene Dichloride)

a. *Background.* EPA published the current NPDWR for 1,2-dichloroethane on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to 1,2-dichloroethane. The revised health effects assessment will consider relevant studies on the toxicity of 1,2-dichloroethane, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.[17]

Although a risk assessment is in process for 1,2-dichloroethane, the existing MCLG is zero and the current MCL of 0.005 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for 1,2-dichloroethane are above 95 percent around the current PQL of 0.005 mg/L, including one study with a true value below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 90 percent passing rates for studies around the current PQL, including seven with true values below the current PQL. Because all of the laboratory passing rates from PE and PT studies—including several with true concentrations below the PQL—exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for 1,2-dichloroethane might be possible. These results, however, are insufficient to recalculate a revised PQL for 1,2-dichloroethane because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of 1,2-dichloroethane (Methods 502.2 and 524.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 139,085 samples. More than 80 percent of these values are less than or equal the modal MRL: 116,533 (84 percent) equal the modal MRL of 0.0005 mg/L and an additional 18,160 (13 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range from 0.00003 to 0.00006 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0003 to 0.0006 mg/L, which contains the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for 1,2-dichloroethane. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of 1,2-dichloroethane at the EQL of 0.0005 mg/L and additional thresholds of 0.001 and 0.0025 mg/L (USEPA, 2009f). Table VI–9 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for three of 50,442 systems (0.006 percent) serving 150 people (or 0.00007 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates 27 MCL violations for 1,2-dichloroethane between 1998 and 2005 (USEPA, 2007g). Average concentrations at 63 to 82 of 50,442 systems (0.125 to 0.163 percent), serving 210,000 to 277,000 people (or 0.092 to 0.122 percent of 227 million people), exceed the EQL of 0.0005 mg/L.

TABLE VI–9—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING 1,2-DICHLOROETHANE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 50,442 systems with 1,2-dichloroethane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	3 (0.006%)	3 (0.006%)	3 (0.006%)
½ MCL (0.0025 mg/L)	9 (0.018%)	9 (0.018%)	8 (0.016%)
2xEQL (0.001 mg/L)	46 (0.091%)	37 (0.073%)	30 (0.059%)
EQL (0.0005 mg/L)	not applicable	82 (0.163%)	63 (0.125%)
	Corresponding population served (percentages based on 226,934,000 people served by the systems with 1,2-dichloroethane data in the Six-Year Review ICR occurrence dataset)		
Regulatory or feasibility-based threshold	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	150 (0.00007%)	150 (0.00007%)	150 (0.00007%)
½ MCL (0.0025 mg/L)	870 (0.0004%)	870 (0.0004%)	830 (0.0004%)
2xEQL (0.001 mg/L)	190,000 (0.084%)	145,200 (0.064%)	87,150 (0.038%)

[17] Note that 1,2-dichloroethane is listed as ethylene dichloride in the IRIS tracking system.

TABLE VI–9—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING 1,2-DICHLOROETHANE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED—Continued

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 50,442 systems with 1,2-dichloroethane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
EQL (0.0005 mg/L)	not applicable	277,000 (0.122%)	210,000 (0.092%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for 1,2-dichloroethane is appropriate at this time because a reassessment of the health risks resulting from exposure to 1,2-dichloroethane is in progress (USEPA, 2009b). Furthermore, the occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. After consideration of the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

27. 1,1-Dichloroethylene

a. *Background.* EPA published the current NPDWR for 1,1-dichloroethylene on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG and an MCL of 0.007 mg/L. EPA based the MCLG on a reference dose of 0.01 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* In the first Six-Year Review cycle, EPA evaluated new information from a health effects assessment completed in 2002 (USEPA, 2002b). At that time, the Agency could not determine that a revision to the NPDWR would provide a meaningful opportunity for cost savings to public water systems or their customers, and decided that any revision would be a low priority activity for the Agency because of competing workload priorities, the administrative costs associated with rulemaking, and the burden on States and the regulated community to implement any regulatory change (68 FR 42908 (USEPA, 2003e)). The 2002 assessment considered relevant studies on the toxicity of 1,1-dichloroethylene including developmental and reproductive toxicity. The assessment revised the RfD from 0.01 mg/kg-day to 0.05 mg/kg-day and concluded that there is inadequate information to assess carcinogenic potential via the oral route (USEPA, 2002b). In the current review cycle, EPA conducted a literature search through June 2007 for relevant data on the toxicology of 1,1-dichloroethylene, including its potential developmental and reproductive toxicity. The literature search did not identify any additional new data that would affect the RfD or cancer classification (USEPA, 2009b). Based on the 2002 IRIS assessment and RfD of 0.05 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 1.75 mg/L. The 2002 cancer assessment indicates that the risk management factor of 10, applied to the current MCLG, may no longer be needed. An RSC of 20 percent results in a possible MCLG of 0.35 mg/L (USEPA, 2009b).

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the results of the occurrence and exposure analyses for 1,1-dichloroethylene to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for 1,1-dichloroethylene, its usefulness is limited for potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–10 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA data. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at threshold levels of interest. This information indicates that any resulting NPDWR change would affect systems that rely on source water at less than 0.02 percent of the NAWQA locations. The STORET results are driven by the 157 sampling locations in Phoenix, Arizona, that have a maximum sample above the MCL of 0.007 mg/L. Five of these locations also account for those having a maximum sample that exceeds 0.35 mg/L.

TABLE VI–10—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR 1,1-DICHLOROETHYLENE

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	2,448 (100.0%) ..	5,788 (100.0%)
Nondetect	1,498 (61.2%)	5,636 (97.37%)
Detected	950 (38.8%)	152 (2.63%)
Exceeds current MCLG of 0.007 mg/L	165 (6.7%)	1 (0.02%)
Exceeds alternative value of 0.35 mg/L	5 (0.2%)	0 (0.0%)

[1] STORET database 2002–2007.
[2] NAWQA database 1992–2008.
Source: USEPA, 2009d.

The BATs and small system compliance technologies for 1,1-dichloroethylene have other beneficial effects, *e.g.,* reduction of other co-occurring contaminants, precursors for DBPs, or other common impurities. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.007 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for 1,1-dichloroethylene, EPA does not believe a revision to the NPDWR for 1,1-dichloroethylene is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for 1,1-dichloroethylene is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

28. cis-1,2-Dichloroethylene

a. *Background.* EPA published the current NPDWR for cis-1,2-dichloroethylene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.07 mg/L. EPA based the MCLG on a reference dose of 0.01 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to cis-1,2-dichloroethylene. The revised health effects assessment will consider relevant studies on the toxicity of cis-1,2-dichloroethylene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for cis-1,2-dichloroethylene is set at its MCLG and a reassessment of the health risks resulting from exposure to cis-1,2-dichloroethylene is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

29. trans-1,2-Dichloroethylene

a. *Background.* EPA published the current NPDWR for trans-1,2-dichloroethylene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.1 mg/L. EPA based the MCLG on a reference dose of 0.02 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to trans-1,2-dichloroethylene. The revised health effects assessment will consider relevant studies on the toxicity of trans-1,2-dichloroethylene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for trans-1,2-dichloroethylene is set at its MCLG and a reassessment of the health risks resulting from exposure to trans-1,2-dichloroethylene is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

30. Dichloromethane (Methylene Chloride)

a. *Background.* EPA published the current NPDWR for dichloromethane on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to dichloromethane. The revised health effects assessment will consider relevant studies on the toxicity of dichloromethane, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.[18]

Although a risk assessment is in process for dichloromethane, the existing MCLG is zero and the current MCL of 0.005 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year

[18] Note that dichloromethane is listed as methylene chloride in the IRIS tracking system.

Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for dichloromethane are all above 90 percent for studies near the PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 85 percent passing rates for studies around the PQL, except for one study with a passing rate of 76 percent. However, all of the true concentrations in the PE and PT data were higher than the current PQL of 0.005 mg/L. Given the lack of PE and PT study results below the current PQL to derive a value at the 75 percent passing rate, PE and PT data are insufficient to support a PQL reduction (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of dichloromethane (Methods 502.2 and 524.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 138,445 samples. More than 80 percent of these values are less than or equal the modal MRL: 121,532 (88 percent) equal the modal MRL of 0.0005 mg/L and an additional 11,294 (8 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range from 0.00002 to 0.00009 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0002 to 0.0009 mg/L, which includes the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, there is evidence of a potential to lower the PQL for dichloromethane even though the PE and PT data are insufficient to support a PQL reduction. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of dichloromethane at the EQL of 0.0005 mg/L and additional thresholds of 0.001 and 0.0025 mg/L (USEPA, 2009f). Table VI–11 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for 13 to 17 of 50,169 systems (0.026 to 0.034 percent) serving 11,000 to 12,000 people (or 0.005 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates 67 MCL violations for dichloromethane between 1998 and 2005 with annual violations ranging from 4 to 14 (USEPA, 2007g). Average concentrations at 383 to 579 of 50,169 systems (0.763 to 1.154 percent), serving approximately 1.8 to 3.5 million people (or 0.813 to 1.542 percent of 227 million people), exceed the EQL of 0.0005 mg/L.

TABLE VI–11—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING DICHLOROMETHANE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 50,169 systems with dichloromethane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	17 (0.034%)	16 (0.032%)	13 (0.026%)
EQL (0.0025 mg/L)	53 (0.106%)	51 (0.102%)	46 (0.092%)
EQL (0.001 mg/L)	276 (0.550%)	208 (0.415%)	169 (0.337%)
EQL (0.0005 mg/L)	not applicable	579 (1.154%)	383 (0.763%)
Regulatory or feasibility-based threshold	Corresponding population served (percentages based on 226,844,000 people served by the systems with dichloromethane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = ≤0 [3]
MCL (0.005 mg/L)	12,000 (0.005%)	12,000 (0.005%)	11,000 (0.005%)
EQL (0.0025 mg/L)	44,000 (0.019%)	40,000 (0.018%)	39,000 (0.017%)
EQL (0.001 mg/L)	1,517,000 (0.669%)	1,386,000 (0.611%)	946,000 (0.417%)
EQL (0.0005 mg/L)	not applicable	3,497,000 (1.542%)	1,844,000 (0.813%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

During Six-Year Review 1, a stakeholder questioned the feasibility of lowering the PQL for dichloromethane below 0.001 mg/L because its use in EPA analytical methods makes it a common laboratory contaminant (68 FR 42908 (USEPA, 2003e)). EPA responded that the high passing rates among PE studies at concentrations close to the current PQL of 0.005 mg/L would not be expected if this were the case and that EPA had no data to suggest that the occurrence estimates reflected monitoring sample contamination (68 FR 42908 (USEPA, 2003e)). For Six-Year Review 2, EPA notes that it does not have PE or PT study results at either 0.001 mg/L or 0.0005 mg/L and, therefore, cannot assess the potential for laboratory contamination of dichloromethane to affect passing rates at this level. A USGS study of volatile organic compound (VOC) occurrence (Moran, 2006) indicates this potential exists at low concentrations. The study presented dichloromethane laboratory reporting levels for newer low-level

analytical methods (*i.e.,* defined as the level that limits the frequency of false positives and false negatives to 1 percent of test results) that ranged from 0.00006 mg/L to 0.00757 mg/L, with a median value of 0.00038 mg/L. The report noted that the laboratory reporting levels for dichloromethane tend to be higher than levels for other VOCs such as PCE (levels ranging from 0.000027 mg/L to 0.0005 mg/L with a median of 0.0001 mg/L) and TCE (ranging from 0.000038 mg/L to 0.0005 mg/L with a median of 0.000038 mg/L) because it was a frequent laboratory contaminant.

A USGS study of ground water, source water, and drinking water quality indicated consistently lower dichloromethane (methylene chloride) occurrence frequencies compared to either PCE or TCE, which are among the most frequently occurring VOCs included in the study (Moran, 2006). Table VI–12 provides a summary of the occurrence results reported in the USGS study. This study also determined that population density was the strongest predictor of dichloromethane occurrence.

TABLE VI–12—SUMMARY OF USGS VOC OCCURRENCE STUDY FINDINGS FOR DICHLOROMETHANE (METHYLENE CHLORIDE)

	Ground water samples	Source water samples	Drinking water samples
Number	5,054	577	1,680
Type	3,877 NAWQA 1,177 Other sources.	Ground water sources for community water systems.	Ground water community water systems.
Location	National	National	New England and Mid-Atlantic States.
Dichloromethane Results	• 3% exceed 0.00002 mg/L • <1% exceed 0.0002 mg/L • Ranked 30th of 55 VOCs based on median concentration (0.00005 mg/L).	• 0.2% (1 sample) exceed 0.0002 mg/L. • Ranked 8th of 52 VOCs based on median concentration (0.0017 mg/L—1 sample).	• 3% exceed 0.0002 mg/L. • Ranked 11th of 51 VOCs in detection frequency. • Ranked 31st of 55 solvents in median concentration (0.001 mg/L).
PCE	• 11% exceed 0.00002 mg/L • 4% exceed 0.0002 mg/L • Ranked 12th of 55 VOCs based on median concentration (0.00007 mg/L).	• 4% exceed 0.0002 mg/L • Ranked 16th of 52 VOCs based on median concentration (0.0009 mg/L).	• 4% exceed 0.0002 mg/L. • Ranked 7th of 51 VOCs in detection frequency. • Ranked 11th of 55 solvents in median concentration (0.0014 mg/L).
TCE	• 5% exceed 0.00002 mg/L • 2.5% exceed 0.0002 mg/L • Ranked 20th of 55 VOCs based on median concentration (0.00012 mg/L).	• 3% exceed 0.0002 mg/L • Ranked 10th of 52 VOCs based on median concentration (0.0015 mg/L).	• 4% exceed 0.0002 mg/L. • Ranked 8th of 51 VOCs in detection frequency. • Ranked 8th of 55 solvents in median concentration (0.0015 mg/L).

Source: Moran, 2006.

EPA compared Six-Year Review ICR occurrence patterns for dichloromethane with contaminant release information to determine if drinking water occurrence corresponds with potential contaminant sources reported in the Toxics Release Inventory (TRI) and found that the states with the majority of systems with mean concentrations that exceed 0.0005 mg/L did not tend to be the States with the highest dichloromethane releases (Moran, 2006). Table VI–13 provides summary information from that comparison. In particular, the numbers of system means exceeding 0.0005 mg/L in Montana and Alaska seem inconsistent with TRI release information and the USGS study finding that population density is the strongest predictor of dichloromethane occurrence.

Because of data gaps regarding the feasibility of PQL reduction and potential occurrence data accuracy at the lowest EQL, EPA concluded that revising the MCL may not constitute a meaningful opportunity to improve the level of public health protection.

TABLE VI–13—STAGE 2 OCCURRENCE SUMMARY FOR DICHLOROMETHANE

State	Systems with mean > 0.0005 mg/L Nondetect = ½ MRL		Total reported TRI on-site or off-site disposal or release of dichloromethane—all industries, 2006 [1]		Total reported TRI on-site or off-site disposal or release of dichloromethane—all industries, 2004 [1]	
	Number	Percent of 579 total systems	Pounds	Percent of 6.8 Million Total Pounds	Pounds	Percent of 7.9 Million Total Pounds
MT	67	12	22,700	0	30,600	0
TX	45	8	314,120	5	410,103	5
FL	40	7	31,451	0	246,775	3
AK	37	6	No data	0	No data	0
IN	29	5	509,303	7	699,783	9
WI	28	5	111,403	2	98,113	1
MO	27	5	51,002	1	32,860	0
CA	26	4	149,423	2	86,554	1
OH	24	4	192,237	3	203,269	3
NM	21	4	No data	0	No data	0

TABLE VI–13—STAGE 2 OCCURRENCE SUMMARY FOR DICHLOROMETHANE—Continued

State	Systems with mean > 0.0005 mg/L Nondetect = ½ MRL		Total reported TRI on-site or off-site disposal or release of dichloromethane—all industries, 2006 [1]		Total reported TRI on-site or off-site disposal or release of dichloromethane—all industries, 2004 [1]	
	Number	Percent of 579 total systems	Pounds	Percent of 6.8 Million Total Pounds	Pounds	Percent of 7.9 Million Total Pounds
IL	19	3	279,024	4	285,101	4
AL	18	3	319,529	5	375,650	5
MN	17	3	39,851	1	81,309	1
CO	15	3	18,475	0	17,003	0
MI	13	2	75,141	1	129,959	2
WY	13	2	No data	0	No data	0
IA	12	2	2,348	0	1,657	0
MD	12	2	36,990	1	31,347	0
NC	12	2	49,800	1	600,032	8
NY	11	2	322,382	5	712,197	9

[1] *Source:* TRI Explorer Chemical Report Summary on-line state summaries for 2006 and 2004.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for dichloromethane is appropriate at this time because a reassessment of the health risks resulting from exposure to dichloromethane is in progress (USEPA, 2009b). In view of the fact that dichloromethane is a common laboratory contaminant, there is uncertainty regarding the extent to which a PQL revision is feasible or whether the Six-Year Review ICR data are reliable at concentrations well below the current PQL. Furthermore, the occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. After consideration of these factors, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

31. 1,2-Dichloropropane

a. *Background.* EPA published the current NPDWR for 1,2-dichloropropane on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of 1,2-dichloropropane as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for 1,2-dichloropropane at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of 1,2-dichloropropane is not warranted at this time.

The current MCL for 1,2-dichloropropane is based on a PQL of 0.005 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of 1,2-dichloropropane might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for 1,2-dichloropropane are above 90 percent near the current PQL of 0.005 mg/L, but there were no results for PE studies with true values below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 90 percent passing rates around the PQL, including nine studies with true values below the current PQL. Because most of the laboratory passing rates from PE and PT studies—including several with true concentrations below the PQL—exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for 1,2-dichloropropane might be possible. These results, however, are insufficient to recalculate a revised PQL for 1,2-dichloropropane because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of 1,2-dichloropropane (Methods 502.2 and 524.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 139,237 samples. More than 80 percent of these values are less than or equal the modal MRL: 119,831 (86 percent) equal the modal MRL of 0.0005 mg/L and an additional 18,311 (13 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range from 0.00003 to 0.00004 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0003 to 0.0004 mg/Lwhich supports the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for 1,2-dichloropropane. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of 1,2-dichloropropane at the EQL of 0.0005 mg/L and additional thresholds of 0.001 and 0.0025 mg/L (USEPA, 2009f). Table VI–14 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations do not exceed the current MCL for any system in the analysis. Note that these results are based on the subset of monitoring data provided in response to the Six-Year

Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates three MCL violations for 1,2-dichloropropane between 1998 and 2005 (USEPA, 2007g). Average concentrations at 47 to 61 of 50,437 systems (0.093 to 0.121 percent), serving 296,000 to 494,000 people (0.130 to 0.218 percent of 227 million people), exceed the EQL of 0.0005 mg/L.

TABLE VI–14—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING 1,2-DICHLOROPROPANE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 50,437 systems with 1,2-dichloropropane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
½ MCL (0.0025 mg/L)	2 (0.004%)	2 (0.004%)	2 (0.004%)
2xEQL (0.001 mg/L)	27 (0.054%)	24 (0.048%)	21 (0.042%)
EQL (0.0005 mg/L)	not applicable	61 (0.121%)	47 (0.093%)
Regulatory or feasibility-based threshold	Corresponding Population Served (percentages based on 226,912,000 people served by the systems with 1,2-dichloropropane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
½ MCL (0.0025 mg/L)	120 (0.00005%)	120 (0.00005%)	120 (0.00005%)
2xEQL (0.001 mg/L)	286,000 (0.126%)	286,000 (0.126%)	284,000 (0.125%)
EQL (0.0005 mg/L)	not applicable	494,000 (0.218%)	296,000 (0.130%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for 1,2-dichloropropane is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

32. Dinoseb

a. *Background.* EPA published the current NPDWR for dinoseb on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.007 mg/L. EPA based the MCLG on a reference dose of 0.001 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of dinoseb, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

A review of analytical or treatment feasibility is not necessary for dinoseb because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the dinoseb NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the dinoseb NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

33. Diquat

a. *Background.* EPA published the current NPDWR for diquat on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.02 mg/L. EPA based the MCLG on a reference dose of 0.0022 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2001, the Agency updated its health effects assessment of diquat (USEPA, 2001a). A subsequent reassessment of tolerances for residues in or on raw agricultural products (USEPA, 2002d) did not identify any new health effects information and based the updated tolerances on health effects information in the 2001 assessment (USEPA, 2001a). The Agency identified a change in this assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of diquat including developmental and reproductive toxicity. The assessment revised the RfD from 0.002 mg/kg-day to 0.005 mg/kg-day and developed a cancer classification of E, evidence of noncarcinogenicity (USEPA, 2001a). Based on the new OPP assessment and RfD of 0.005 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could

be 0.175 mg/L. An RSC of 20 percent results in a possible MCLG of 0.035 mg/L, rounded to 0.04 mg/L.

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the available occurrence and exposure information for diquat to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for diquat, its usefulness is limited for determining potential cost savings to PWS and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings. Because the primary informations sources used to evaluate potential source water occurrence—STORET and NAWQA—do not report monitoring results for diquat, the Agency obtained available information on diquat use and fate and transport.

Diquat's primary uses are as an algaecide, defoliant, desiccant, and herbicide (USEPA, 1995a). The most recent pesticide application estimates in the Pesticide Use Database developed by the National Center for Food and Agricultural Policy (NCFAP) indicate overall cropland application of almost 270,000 pounds in 1997, primarily on potato and alfalfa crops (NCFAP, 2000). The NCFAP based these estimates on State-level pesticide usage patterns for the period 1994–1998 and State-level crop acreage for 1997. These estimates reflect several limitations: they do not include noncropland applications, the data sources vary in quality, and State-level pesticide use data gaps are filled using data for nearby states. The USGS estimated county-level pesticide usage for 2002 based on crop acreage estimates in the 2002 Census of Agriculture and State-level application rates for the period 1999–2004 developed by the CropLife Foundation (USGS, no date), which implemented the NCFAP method for estimating pesticide usage (Gianessi and Regner, 2006) and, therefore, has similar limitations. The USGS estimates total diquat application to crops of approximately 200,000 pounds per year, with potatoes accounting for almost 90 percent of these applications (USGS, no date). Diquat use on crops occurred primarily in regions of New England, the Great Lakes, North Dakota, the Pacific Northwest, California, and Florida. In comparison to other commonly used pesticides, diquat has the lowest national estimate for use on crops (Gianessi and Regner, 2006).

The *Reregistration Eligibility Decision (RED) for Diquat Dibromide* (USEPA, 1995a) notes that although diquat is persistent (*i.e.,* it does not hydrolyze and is resistant to degradation), it becomes immobile when it adsorbs to soil particles and, therefore, is not expected to contaminate ground water. Furthermore, diquat dissipates quickly from surface water because it adsorbs to soil sediments, vegetation, and organic matter; the estimated half-life is 1 to 2 days for diquat in surface water based on a study of two ponds in Florida (USEPA, 1995a). These factors indicate the possibility of low occurrence in drinking water sources.

The BAT and small system compliance technologies for diquat have other beneficial effects, *e.g.,* removing other co-occurring contaminants. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.02 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for diquat, EPA does not believe a revision to the NPDWR for diquat is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for diquat is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. After consideration of this factor, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

34. Endothall

a. *Background.* EPA published the current NPDWR for endothall on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.1 mg/L. EPA based the MCLG on a reference dose of 0.02 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2005, the Agency updated its health effects assessment of endothall (USEPA, 2005d). The Agency identified a change in this assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of endothall including developmental and reproductive toxicity. The assessment revised the RfD from 0.02 mg/kg-day to 0.007 mg/kg-day and concluded that endothall is unlikely to be carcinogenic to humans (USEPA, 2005d). Based on the new OPP assessment and RfD of 0.007 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 0.245 mg/L. An RSC of 20 percent results in a possible MCLG of 0.05 mg/L.

Because of a possible change in the MCLG for endothall, EPA considered whether analytical feasibility is likely to be a limitation if the Agency were to consider lowering the MCL to 0.05 mg/L (the possible MCLG). EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for endothall are generally above 80 percent, but there were no results for PE studies with true values below the current PQL of 0.09 mg/L. More recent PT data from late 1999 through 2004, supplied by a PT provider, show passing rates above 75 percent for most studies, but there are four studies with passing rates equal to or less than the 75 percent criterion, including two close to the current PQL. No PT studies had true values below the current PQL. Given the variable results from the PT studies and the lack of PE and PT study results below the current PQL, PE and PT data are insufficient to support a PQL reduction (USEPA, 2009c).

While the PT data are not sufficient to support a lowering of the PQL for endothall at this time, the current PQL of 0.09 mg/L is greater than the possible MCLG. It would therefore limit a possible revision to the MCL. EPA

evaluated two alternative sources of information to determine whether they indicate any potential to revise the PQL: laboratory minimum reporting levels in the Six-Year Review ICR dataset, and the MDLs for the approved method for the detection of endothall (Method 548.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 21,792 samples. Of these, 21,445 (98 percent) have an MRL value of 0.05 mg/L or lower. Because more than 80 percent of the MRL values are at or below the possible MCLG of 0.05 mg/L, EPA selected that value as the minimum threshold for the occurrence and exposure analysis (USEPA, 2009e). The MDL of the approved method is 0.00179 mg/L. Applying a multiplier of 10 would give a possible PQL of 0.0179 mg/L,which is below the possible MCLG (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, there is evidence of a potential to lower the PQL for endothall even though the PE and PT data are insufficient to support a PQL reduction. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of endothall at the possible MCLG of 0.05 mg/L (USEPA, 2009f). Table VI–15 shows the results of the occurrence and exposure analysis for the current MCL and the possible MCLG set equal to 0.05 mg/L based on the new health effects information and the laboratory minimum reporting levels in the Six-Year Review ICR dataset. The occurrence and exposure analysis shows that average concentrations do not exceed the current MCL for any system in the analysis. Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on running annual average concentrations at entry points; nevertheless, SDWIS/FED indicates no MCL violations for endothall between 1998 and 2005 (USEPA, 2007g). The average concentration at one of the 14,156 systems (0.007 percent), serving 10,000 people (or 0.008 percent of 119 million people), exceeds the possible MCLG based on new health effects information (0.05 mg/L).

TABLE VI–15—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING ENDOTHALL THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with mean concentrations that are greater than the regulatory or health-based threshold (percentages based on 14,156 systems with endothall data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.1 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (0.05 mg/L)	1 (0.007%)	1 (0.007%)	1 (0.007%)
Regulatory or health-based threshold	Corresponding population served (percentages based on 118,536,800 people served by the systems with endothall data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.1 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (0.05 mg/L)	10,000 (0.008%)	10,000 (0.008%)	10,000 (0.008%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for endothall, EPA does not believe a revision to the NPDWR for endothall is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for endothall is likely to provide a meaningful opportunity for health risk reductions. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

35. Endrin

a. *Background.* EPA published the current NPDWR for endrin on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.002 mg/L. EPA based the MCLG on a reference dose of 0.0003 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of endrin, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

A review of analytical or treatment feasibility is not necessary for endrin because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the endrin NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the endrin NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

36. Epichlorohydrin

a. *Background.* EPA published the current NPDWR for epichlorohydrin on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR imposes a TT requirement that limits the allowable level of epichlorohydrin monomer in the polymer that is added to water as a flocculent to remove particulates. Each water system is required to certify, in writing, to the State (using third-party or manufacturer's certification) that the combination (or product) of dose and monomer level does not exceed the following level: 0.01 percent residual epichlorohydrin monomer in polymer products used during water treatment and dosed at 20 mg/L (ppm).

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of epichlorohydrin as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for epichlorohydrin at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of epichlorohydrin is not warranted at this time.

EPA has identified information that suggests that the residual epichlorohydrin content in water treatment polymers has decreased significantly, likely due to improvements in manufacturing processes and technologies (USEPA, 2009g). NSF International analyses conducted between January 2005 and June 2007 found that, in 84 epichlorohydrin-based polymers/co-polymers submitted for certification under NSF Standard 60, the residual epichlorohydrin content was always below the detection limit of 0.002 percent.

Epichlorohydrin standards in Europe and Australia are also stricter than the NPDWR. Based on the concentration of dose and monomer level in the NPDWR, finished water could contain up to 2 µg/L (ppb) of epichlorohydrin. By contrast, the European Union requires that finished water contain less than 0.1 µg/L (ppb) epichlorohydrin, and Australia requires that the concentration in finished water be less than 0.5 µg/L (ppb). The United Kingdom requires that polymers used in drinking water contain less than 0.002 percent residual epichlorohydrin, and the dose of these polymers be less than 5 mg/L (ppm) at all times, for a maximum finished water concentration of 0.1 µg/L (ppb).

To assess the occurrence of epichlorohydrin in drinking water, EPA sought data on current usage practices for polymers containing it. The Agency is not presently aware of any recent, large-scale studies of polymer usage in drinking water facilities, and therefore cannot fully characterize the occurrence of epichlorohydrin in drinking water. However, cationic polymers used in water treatment often contain epichlorohydrin. The 1996 WATER:\STATS database (described in Levine *et al.,* 2004), based on an AWWA survey, indicates that 13 percent of ground water systems and 66 percent of surface water systems surveyed use a polymer for water treatment. Many of these are cationic polymers, particularly for surface water systems; cationic polymers used to treat drinking water often use epichlorohydrin monomer.

Additional information on the extent of use of epichlorohydrin based polymers/co-polymers in drinking water would further assist the Agency in evaluating the potential public health benefits associated with a revision to the treatment technique for epichlorohydrin. Because most epichlorohydrin-based polymers available today have a significantly lower residual monomer content than that specified in the treatment technique (2009g), EPA believes that the costs of a revision would be minimal and recognizes that benefits may also be small.

c. *Review Result.* The Agency believes it is appropriate to revise the NPDWR for epichlorohydrin. The existing MCLG is zero (based on the current B2 cancer classification) and NSF International data indicate that epichlorohydrin based polymers/copolymers are widely available with lower monomer levels than required by the existing NPDWR. Hence, revisions to the epichlorohydrin NPDWR will provide a meaningful opportunity to maintain the health risk reductions achieved by technological advances in manufacturing. As discussed in Section VII, the Agency solicits public comment on the use of epichlorohydrin-based polymers/co-polymers in drinking water facilities (since this may provide additional information on the occurrence of epichlorohydrin in drinking water) to help inform the regulatory revisions. EPA notes that any changes to the NPDWR for epichlorohydin may also include revisions to the closely related NPDWR for acrylamide.

37. Ethylbenzene

a. *Background.* EPA published the current NPDWR for ethylbenzene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.7 mg/L. EPA based the MCLG on a reference dose of 0.1 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to ethylbenzene. The revised health effects assessment will consider relevant studies on the toxicity of ethylbenzene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for ethylbenzene is set at its MCLG and a reassessment of the health risks resulting from exposure to ethylbenzene is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

38. Ethylene Dibromide (EDB; 1,2-Dibromoethane)

a. *Background.* EPA published the current NPDWR for EDB on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.00005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* The Agency updated the health effects assessment for EDB in 2004 and retained the cancer classification on which the 1991 MCLG is based (USEPA, 2004a). As a part of the 2004 assessment, EPA considered relevant studies on the toxicity of EDB, including its potential developmental and reproductive toxicity.

The current MCL for EDB is based on a PQL of 0.00005 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of EDB might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for EDB are all 75 percent or higher. However, the true concentrations were all higher than the current PQL of 0.00005 mg/L. More

recent PT data from late 1999 through 2004, supplied by a PT provider, likewise show passing rates of 75 percent or higher, but again, all of the true concentrations in the PT data were higher than the current PQL. Because of the lack of data below the PQL, a lowering of the PQL for EDB is not appropriate at this time (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of EDB (Methods 504.1 and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 83,063 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 26,926 (32 percent) equal the modal MRL of 0.00001 mg/L and an additional 454 (0.5 percent) are lower than 0.00001 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.00001 and 0.000032 mg/L. Applying a multiplier of 5, which was used to establish the PQL, would give a possible PQL range from 0.00005 to 0.00016 mg/L. The result is higher than or equal to the current PQL and, therefore, EPA did not estimate an EQL (USEPA, 2009e). Based on these varied and unrelated approaches/sources of information, EPA believes that there is no potential to lower the PQL. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* EPA did not identify new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL). Therefore, EPA does not believe a revision to the NPDWR for EDB is appropriate at this time.

39. Fluoride

a. *Background.* EPA published the current NPDWR for fluoride on April 2, 1986 (51 FR 11396 (USEPA, 1986c)). The NPDWR established an MCLG and an MCL of 4.0 mg/L. The MCLG was developed from a lowest effect level for crippling skeletal fluorosis of 20 mg/day with continuous exposures over a 20-year or longer period. The lowest-observed-adverse-effect level (LOAEL) was divided by an uncertainty factor of 2.5 and a drinking water intake of 2 liters/day (L/day) to obtain the MCLG. Drinking water was considered to be the only source of exposure for the calculation. At the same time, EPA published a secondary maximum contaminant level (SMCL) for fluoride of 2.0 mg/L to protect against dental fluorosis, which was considered to be an adverse cosmetic effect. PWSs exceeding the fluoride SMCL must provide public notification to their customers.

Fluoride is unique because of its beneficial effects at low level exposures, and because it is voluntarily added to some drinking water systems as a public health measure for reducing the incidence of cavities among the treated population. The amount of fluoride added to drinking water for fluoridation ranges from 0.7 to 1.2 mg/L, depending on ambient air temperatures. The decision to fluoridate a water supply is made by the State or local municipality, and is not mandated by EPA or any other Federal entity.

b. *Technical Reviews.* As a result of the first Six-Year Review of the fluoride NPDWR (67 FR 19030 (USEPA, 2002c) (preliminary); 68 FR 42908 (USEPA, 2003e) (final)), EPA requested that the National Research Council (NRC) of the National Academies of Science (NAS) conduct a review of the recent health and exposure data on orally ingested fluoride. In 2006, the NRC published the results of their evaluation in a report entitled, *Fluoride in Drinking Water: A Scientific Review of EPA's Standards.* Based on its review, NRC concluded that severe dental fluorosis is an adverse health effect when it causes confluent thinning and pitting of the enamel, a situation that compromises the function of the enamel in protecting the dentin and eventually the pulp from decay and infection. There was consensus among the committee that severe dental fluorosis is an effect that should be avoided and that "exposure at the MCLG clearly puts children at risk of developing severe enamel fluorosis." In addition, the committee examined the scientific data on the impact of fluoride on the strength and structure of bone and the majority concluded that the MCLG "is not likely to be protective against bone fractures." NRC recommended that EPA use the available dose-response data for the effects of fluoride on severe dental fluorosis and skeletal fractures in combination with data on the relative contribution of drinking water to total fluoride exposure to identify an MCLG that would be protective against these effects.

The NRC also evaluated the impact of fluoride on reproduction and development, neurotoxicity and behavior, the endocrine system, genotoxicity, cancer and other effects. They concluded that the available data were inadequate to determine if a risk for effects on these endpoints exists at an MCLG of 4 mg/L and made recommendations for additional research. After considering the genotoxicity data, cancer studies in humans and animals, and studies of mode of action in cell systems, NRC determined that the evidence on the potential of fluoride to initiate or promote cancers, particularly of the bone, is tentative and mixed. They recommended that EPA await the results and publication of an in-process hospital-based, case-control study of osteosarcoma and fluoride exposure from the Harvard School of Dental Medicine before determining if an Agency update of the cancer risk assessment for fluoride is necessary.[19]

c. *Review Result.* The Agency does not believe a revision to the NPDWR for fluoride is appropriate at this time because the Agency's Office of Water (OW) is in the process of developing its dose-response assessment of the noncancer impacts of fluoride on severe dental fluorosis and the skeletal system. In addition, the OW is updating its evaluation of the relative contribution of drinking water to total fluoride exposure considering the contributions from dental products, foods, pesticide residues, and other sources such as ambient air and medications. Once the Agency completes and publishes peer reviewed versions of these in-process assessments, it will be able to determine the potential impacts on the MCLG, MCL, and/or the SMCL and whether any revisions to these would be appropriate.

40. Glyphosate

a. *Background.* EPA published the current NPDWR for glyphosate on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.7 mg/L. EPA based the MCLG on a reference dose of 0.1 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2002, the Agency updated its health effects assessment of glyphosate (USEPA, 2002a). The Agency identified a change in this assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of glyphosate including developmental and reproductive toxicity. The assessment revised the RfD from 0.1 mg/kg-day to 2 mg/kg-day and

[19] At this time, the results of the osteosarcoma cancer study recommended by NAS have not been published.

concluded that glyphosate has evidence of non-carcinogenicity in humans (USEPA, 2002a). Based on the new OPP assessment and RfD of 2 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 70 mg/L. An RSC of 20 percent results in a possible MCLG of 14 mg/L, (USEPA, 2009b).

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the results of the occurrence and exposure analyses for glyphosate to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for glyphosate, its usefulness is limited for determining potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–16 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA data. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at thresholds levels of interest. This information indicates that any resulting NPDWR change would not affect systems that rely on source water at any of the NAWQA or STORET locations.

TABLE VI–16—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR GLYPHOSATE

Maximum Concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	241 (100.0%)	41 (100.0%)
Nondetect	180 (74.7%)	37 (90.2%)
Detected	61 (25.3%)	4 (9.8%)
Exceeds current MCLG of 0.7 mg/L	0 (0.0%)	0 (0.0%)
Exceeds alternative value of 14.0 mg/L	0 (0.0%)	0 (0.0%)

[1] STORET database 2002–2007.
[2] NAWQA database 1992–2005.
Source: USEPA, 2009d.

The BAT and small system compliance technologies for glyphosate have other beneficial effects, *e.g.,* pretreatment for other co-occurring contaminants or disinfection. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.7 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for glyphosate, EPA does not believe a revision to the NPDWR for glyphosate is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for glyphosate is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

41. Heptachlor

a. *Background.* EPA published the current NPDWR for heptachlor on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.0004 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of heptachlor as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for heptachlor at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of heptachlor is not warranted at this time.

The current MCL for heptachlor is based on a PQL of 0.0004 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of heptachlor might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for heptachlor are above 90 percent around the current PQL of 0.0004 mg/L, including three studies with true values below the current PQL. All passing rates in the PE data exceeded 80 percent. More recent PT data from late 1999 through 2004, supplied by a PT provider, show greater than 75 percent passing rates for a majority of studies, but there are no studies with true values below the current PQL. There are three PT studies with passing rates below 75 percent. Despite this variability, most of the laboratory passing rates from PE and PT studies, including three with true values below the PQL, exceeded the 75 percent criterion typically used to derive a PQL. Therefore, a lowering of the PQL for heptachlor might be possible. These results, however, are insufficient to recalculate a revised PQL for heptachlor because not enough data points are available below the current

PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of heptachlor (Methods 505, 508, 508.1, 525.2, and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 58,758 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 24,918 (42 percent) equal the modal MRL of 0.00004 mg/L and an additional 7,966 (14 percent) are lower than 0.00004 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.000003, 0.0000015, 0.000005, 0.00015, and 0.000081 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.000015 to 0.0015 mg/L. EPA used the median 10×MDL value of 0.00005 mg/L and rounded up to 0.0001 mg/L for the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there may be potential to lower the PQL for heptachlor. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of heptachlor at the EQL of 0.0001 mg/L and additional threshold of 0.0002 mg/L (USEPA, 2009f). Table VI–17 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for one of 33,020 systems (0.003 percent) serving 325 people (or 0.0002 percent of 184 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates no MCL violations for heptachlor between 1998 and 2005 (USEPA, 2007g). Average concentrations at 42 of 33,020 systems (0.127 percent), serving 31,500 people (or 0.017 percent of 184 million people), exceed the EQL of 0.0001 mg/L.

TABLE VI–17—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING HEPTACHLOR THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 33,020 systems with heptachlor data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.0004 mg/L)	1 (0.003%)	1 (0.003%)	1 (0.003%)
½ MCL (0.0002 mg/L)	1 (0.003%)	1 (0.003%)	1 (0.003%)
EQL (0.0001 mg/L)	42 (0.127%)	42 (0.127%)	42 (0.127%)
Regulatory or feasibility-based threshold	Corresponding population served (percentages based on 184,444,000 people served by the systems with heptachlor data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.0004 mg/L)	325 (0.0002%)	325 (0.0002%)	325 (0.0002%)
½ MCL (0.0002 mg/L)	325 (0.0002%)	325 (0.0002%)	325 (0.0002%)
EQL (0.0001 mg/L)	31,500 (0.017%)	31,500 (0.017%)	31,500 (0.019%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for heptachlor is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

42. Heptachlor Epoxide

a. *Background.* EPA published the current NPDWR for heptachlor epoxide on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.0002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of heptachlor epoxide as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for heptachlor epoxide at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of heptachlor epoxide is not warranted at this time.

The current MCL for heptachlor epoxide is based on a PQL of 0.0002 mg/L. For the Six-Year Review, the Agency

considered whether changes in the analytical feasibility of heptachlor epoxide might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for heptachlor epoxide are above 85 percent around the current PQL of 0.0002 mg/L, including two studies with true values below the current PQL. All passing rates in the PE data exceeded 80 percent. More recent PT data from late 1999 through 2004, supplied by a PT provider, show greater than 75 percent passing rates for a majority of studies, but there are no studies with true values below the PQL. There are two PT studies with passing rates below 75 percent. Despite this variability, most of the laboratory passing rates from PE and PT studies exceeded the 75 percent criterion typically used to derive a PQL. Therefore, a lowering of the PQL for heptachlor epoxide might be possible. These results, however, are insufficient to recalculate a revised PQL for heptachlor epoxide because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of heptachlor epoxide (Methods 505, 508, 508.1, 525.2, and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 58,731 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 26,424 (45 percent) equal the modal MRL of 0.00002 mg/L and an additional 5,969 (10 percent) are lower than 0.00002 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.000004, 0.0000059, 0.000001, 0.00013, and 0.000202 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.00001 to 0.00202 mg/L. EPA used the median 10 × MDL value of 0.000059 mg/L and rounded up to 0.0001 mg/L for the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there may be potential to lower the PQL for heptachlor epoxide. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of heptachlor epoxide at an EQL of 0.0001 mg/L (USEPA, 2009f). Table VI–18 shows the results of the occurrence and exposure analysis for the current MCL and an EQL. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for one of 33,015 systems (0.003 percent) serving 325 people (or 0.0002 percent of 184 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates two MCL violations for heptachlor epoxide between 1998 and 2005 (USEPA, 2007g). Average concentrations at three of 33,015 systems (0.009 percent), serving 14,400 people (or 0.008 percent of 184 million people), exceed the EQL of 0.0001 mg/L.

TABLE VI–18—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING HEPTACHLOR EPOXIDE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 33,015 systems with heptachlor epoxide data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.0002 mg/L)	1 (0.003%)	1 (0.003%)	1 (0.003%)
EQL (0.0001 mg/L)	3 (0.009%)	3 (0.009%)	3 (0.009%)
Regulatory or feasibility-based threshold	Corresponding population served (percentages based on 184,478,000 people served by the systems with heptachlor epoxide data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect Values = ½ MRL [2]	Nondetect Values = 0 [3]
MCL (0.0002 mg/L)	325 (0.0002%)	325 (0.0002%)	325 (0.002%)
EQL (0.0001 mg/L)	14,400 (0.008%)	14,400 (0.008%)	14,400 (0.008%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for heptachlor epoxide is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

43. Hexachlorobenzene

a. *Background.* EPA published the current NPDWR for hexachlorobenzene on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.001 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of hexachlorobenzene as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for hexachlorobenzene at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of hexachlorobenzene is not warranted at this time.

The current MCL for hexachlorobenzene is based on a PQL of 0.001 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of hexachlorobenzene might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for hexachlorobenzene are above 80 percent around the current PQL of 0.001 mg/L, including eight studies with true values below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 75 percent passing rates for a majority of studies, including eight out of nine studies with true values below the current PQL. There are two PT studies with passing rates equal to or less than 75 percent, including one with a true value below the PQL. Despite this variability, most of the laboratory passing rates from PE and PT studies—including several with true concentrations below the PQL—exceeded the 75 percent criterion typically used to derive a PQL. Therefore, a lowering of the PQL for hexachlorobenzene might be possible. These results, however, are insufficient to recalculate a revised PQL for hexachlorobenzene because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of hexachlorobenzene (Methods 505, 508, 508.1, 525.2, and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 58,713 samples. More than 80 percent of these values are less than or equal the modal MRL: 40,791 (69 percent) equal the modal MRL of 0.0001 mg/L and an additional 7,380 (13 percent) are lower than 0.0001 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods are 0.000002, 0.0000077, 0.000001, 0.00013, and 0.000003 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.00001 to 0.0013 mg/L, which contains the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for hexachlorobenzene. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of hexachlorobenzene at the EQL of 0.0001 mg/L and an additional threshold of 0.0005 mg/L (USEPA, 2009f). Table VI–19 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for three of 32,826 systems (0.009 percent) serving 2,000 people (or 0.001 percent of 184 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates two MCL violations for hexachlorobenzene between 1998 and 2005 (USEPA, 2007g). Average concentrations at 9 to 16 of 32,826 systems (0.027 to 0.049 percent), serving approximately 9,000 to 94,000 people (or 0.005 to 0.051 percent of 184 million people), exceed the EQL of 0.0001 mg/L.

TABLE VI–19—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING HEXACHLOROBENZENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 32,826 systems with hexachlorobenzene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.001 mg/L)	3 (0.009%)	3 (0.009%)	3 (0.009%)
½ MCL (0.0005 mg/L)	4 (0.012%)	4 (0.012%)	4 (0.012%)
EQL (0.0001 mg/L)	not applicable	16 (0.049%)	9 (0.027%)
Regulatory or feasibility-based threshold	Corresponding population served (percentages based on 184,124,800 people served by the systems with hexachlorobenzene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.001 mg/L)	2,000 (0.001%)	2,000 (0.001%)	2,000 (0.001%)
½ MCL (0.0005 mg/L)	5,000 (0.003%)	5,000 (0.003%)	5,000 (0.003%)
EQL (0.0001 mg/L)	not applicable	94,000 (0.051%)	9,000 (0.005%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.001 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.

[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.

[3] Results are based on setting all nondetect results equal to zero.

Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for hexachlorobenzene is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

44. Hexachlorocyclopentadiene

a. *Background.* EPA published the current NPDWR for hexachlorocyclopentadiene on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.05 mg/L. EPA based the MCLG on a reference dose of 0.007 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In the first Six-Year Review cycle, EPA evaluated new information from a health effects assessment completed in 2001 (USEPA, 2001b). At that time, the Agency could not determine that a revision to the NPDWR would provide a meaningful opportunity for public health protection (67 FR 19030 (USEPA, 2002c)). The 2001 assessment considered relevant studies on the toxicity of hexachlorocyclopentadiene including developmental and reproductive toxicity. The assessment revised the RfD from 0.007 mg/kg-day to 0.006 mg/kg-day (USEPA, 2001b). In the current review cycle, EPA conducted a literature search through June 2007 for relevant data on the toxicology of hexachlorocyclopentadiene, including its potential developmental and reproductive toxicity. The literature search did not identify any new data that would affect the RfD or cancer classification (USEPA, 2009b). Based on the 2001 IRIS assessment and RfD of 0.006 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 0.21 mg/L. An RSC of 20 percent results in a possible MCLG of 0.04 mg/L (USEPA, 2009b).

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor for the possible MCLG decrease under consideration.

EPA evaluated the results of the occurrence and exposure analyses for hexachlorocyclopentadiene to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to improve the level of public health protection (USEPA, 2009f). Table VI–20 shows the results of the occurrence and exposure analysis for the current MCL and the possible MCLG. The occurrence and exposure analysis shows that average concentrations do not exceed the current MCL for any systems in the analysis. Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on running annual average concentrations at entry points; SDWIS/FED indicates no MCL violations for hexachlorocyclopentadiene between 1998 and 2005 (USEPA, 2007g). The occurrence and exposure analysis shows that average concentration do not exceed the possible MCLG based on health effects information (0.04 mg/L).

TABLE VI–20—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING HEXACHLOROCYCLOPENTADIENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with mean concentrations that are greater than the regulatory or health-based threshold (percentages based on 32,801 systems with hexachlorocyclopentadiene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.05 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (0.04 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Regulatory or health-based threshold	Corresponding population served (percentages based on 184,738,000 people served by the systems with hexachlorocyclopentadiene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.05 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (0.04 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for hexachlorocyclopentadiene, EPA does not believe a revision to the NPDWR for hexachlorocyclopentadiene is appropriate at this time. In making this

decision, the Agency considered whether any possible revision to the NPDWR for hexachlorocyclopentadiene is likely to provide a meaningful opportunity for health risk reductions. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

45. Lindane (gamma-Hexachlorocyclohexane)

a. *Background.* EPA published the current NPDWR for lindane on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.0002 mg/L. EPA based the MCLG on a reference dose of 0.0003 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* In the first Six-Year Review cycle, EPA evaluated new information from a health effects assessment completed in 2002 (USEPA, 2006b). At that time, the Agency could not determine that a revision to the NPDWR would provide a meaningful opportunity for cost savings to public water systems or their customers, and decided that any revision would be a low priority activity for the Agency because of competing workload priorities, the administrative costs associated with rulemaking, and the burden on States and the regulated community to implement any regulatory change (68 FR 42908, July 18, 2003 (USEPA, 2003e)). The 2002 assessment considered relevant studies on the toxicity of lindane including developmental and reproductive toxicity. The assessment revised the RfD from 0.0003 mg/kg-day to 0.0047 mg/kg-day and classified it as "Suggestive evidence of carcinogenicity, but not sufficient to assess human carcinogenic potential" (USEPA, 2006b). During the current review cycle, all uses of lindane were cancelled voluntarily (71 FR 74905, December 13, 2006 (USEPA, 2006e)), effective July 1, 2007. However, lindane is a persistent and bioaccumulative pesticide. Accordingly, EPA conducted a literature search for relevant data on the toxicology of lindane, including its potential developmental and reproductive toxicity. The literature search did not identify any additional new data that would affect the RfD or cancer classification (USEPA, 2009b).The possible revised MCLG is based on the 2002 OPP assessment and RfD of 0.0047 mg/kg-day, a body weight of 70 kg, water intake of 2 L/day, and an RSC of 20 percent. Uncertainty factors related to reproductive and developmental effects, and/or a possible risk management factor based on the suggested evidence of carcinogenicity, could be used in developing a possible revised MCLG. Depending on the choice of uncertainty factors, the MCLG could range between 0.001 mg/L and 0.03 mg/L.

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the results of the occurrence and exposure analyses for lindane to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for lindane, its usefulness is limited for determining potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–21 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at threshold levels of interest. In the upper bound analysis, an NPDWR change would affect systems that rely on source water at less than 0.01 percent of the NAWQA locations and less than 0.3 percent of the STORET locations. Any MCLG/MCL revision to a potentially higher level of 0.001 mg/L (the lower bound) or 0.03 mg/L (the upper bound) would likely affect fewer systems.

TABLE VI–21—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR LINDANE

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	2,691 (100.0%)	8,195 (100.0%)
Nondetect	2,017 (75%)	8,058 (98.3%)
Detected	674 (25%)	137 (1.7%)
Exceeds current MCLG of 0.0002 mg/L	7 (0.26%)	1 (0.01%)
Exceeds upper bound alternative value of 0.03 mg/L	1 (0.04%)	0 (0.0%)

[1] STORET database 2002–2007.
[2] NAWQA database 1992–2005.
Source: USEPA, 2009d.

The BATs and small system compliance technologies for lindane have other beneficial effects, *e.g.,* reduction of other co-occurring contaminants, precursors for DBPs, or other common impurities. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.0002 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be

a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for lindane, EPA does not believe a revision to the NPDWR for lindane is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for lindane is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

46. Mercury (Inorganic)

a. *Background.* EPA published the current NPDWR for inorganic mercury on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.002 mg/L. The Agency based the MCLG on a DWEL of 0.01 mg/L [20] and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of inorganic mercury, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

A review of analytical or treatment feasibility is not necessary for inorganic mercury because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the inorganic mercury NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the inorganic mercury NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

[20] The DWEL was recommended by a panel of experts on mercury, and was derived using the weight of evidence from the entire inorganic mercury database. The DWEL was later back-calculated to an RfD of 0.0003 mg/kg-day (USEPA, 1995).

47. Methoxychlor

a. *Background.* EPA published the current NPDWR for methoxychlor on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.04 mg/L. EPA based the MCLG on a reference dose of 0.005 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of methoxychlor, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b). The Six-Year Review 1 stated that the Agency had initiated a reassessment of the health risks posed by exposure to methoxychlor (67 FR 19030 (USEPA, 2002c)). Since 2002, the Agency has cancelled all product uses and concluded that the database to complete the health effects assessment for methoxychlor was inadequate (USEPA, 2004c). In its Reregistration Eligibility Decision, OPP noted substantive data gaps for methoxychlor, including lack of Guideline studies for chronic systemic toxicity as well as reproductive and developmental toxicity (USEPA, 2004c).

A review of analytical or treatment feasibility is not necessary for methoxychlor because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the methoxychlor NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the methoxychlor NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

48. Monochlorobenzene (Chlorobenzene)

a. *Background.* EPA published the current NPDWR for monochlorobenzene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.1 mg/L. EPA based the MCLG on a reference dose of 0.02 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of monochlorobenzene, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

A review of analytical or treatment feasibility is not necessary for monochlorobenzene because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the monochlorobenzene NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the monochlorobenzene NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

49. Nitrate (as N)

a. *Background.* EPA published the current NPDWR for nitrate on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 10 mg/L (as N). EPA based the MCLG on a survey of epidemiologic studies of infant methemoglobinemia in populations exposed to nitrate contaminated water. No cancer classification is currently available for nitrate (USEPA, 2009b).

b. *Technical Reviews.* The health effects technical review identified new information on developmental effects of nitrate, as well as data regarding its carcinogenicity, that may indicate the need to update the Agency's health effects assessment (USEPA, 2009b). Several studies suggest that nitrate in drinking water can have adverse effects on the thyroid (Mukhopadhyay *et al.,* 2005; Tajtakova *et al.,* 2006; Zaki *et al.,* 2004). Nitrate has long been known as a competitive inhibitor of iodide uptake in the thyroid (Wolff and Maury, 1963). Inhibition of iodide uptake can lead to alteration in thyroid hormone levels including decreases in levothyroxine (T4) levels. NAS (1995) stated that it is likely that the motor changes reported by Markel *et al.* (1989) when the animals were young were not a direct effect of nitrate, but were secondary to effects on learning behavior. Based on these considerations, a new assessment of the noncancer effects of nitrate may be warranted, including consideration of whether methemoglobinemia in infants, which is an acute effect, is still the most appropriate basis for the chronic exposure limit for nitrate. In addition, recent information may suggest the consideration of separate acute and chronic values for nitrate.

The health effects review identified a number of relevant new studies that may warrant a review of the cancer

classification for nitrate. These studies include a number of new epidemiology studies (Cocco *et al.,* 2003; Coss *et al.,* 2004; de Roos *et al.,* 2003; Mueller *et al.,* 2004; Volkmer *et al.,* 2005; Ward *et al.,* 2003; Ward *et al.,* 2005a; Ward *et al.,* 2005b; Ward *et al.,* 2006; Yang *et al.,* 2007; Zeegers *et al.,* 2006), as well as a recent report from an International Agency for Research on Cancer (IARC) Working group (Grosse *et al.,* 2006). This latter report concluded that, under conditions that result in endogenous nitrosation, ingested nitrate or nitrite is probably carcinogenic to humans.

In light of this information, EPA considers nitrate as a potential candidate for a new health effects assessment. The Agency solicits feedback on its plans to reassess health risks resulting from exposure to nitrate. The Agency also welcomes any scientific information related to nitrate health risks from the public. Because EPA considers nitrate as a candidate for a new assessment, EPA does not believe it is appropriate to consider any possible revisions to the MCLG (as well as the MCL) at this time.

A review of analytical or treatment feasibility is not necessary for nitrate because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the nitrate NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* The Agency is considering whether to initiate a new health assessment for nitrate and therefore does not believe a revision to the NPDWR is appropriate at this time.

As discussed in Section VII, the Agency is asking for input and information about several implementation issues related to nitrate (*see* section V.B.6).

50. Nitrite (as N)

a. *Background.* EPA published the current NPDWR for nitrite on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 1 mg/L (as N). EPA based the MCLG on extrapolation from nitrate, assuming the conversion of 10 percent of nitrate-nitrogen to nitrite-nitrogen. No cancer classification is currently available for nitrite (USEPA, 2009b).

b. *Technical Reviews.* The health effects technical review identified new information on developmental effects of nitrite, as well as data regarding its carcinogenicity, that may indicate the need to update the Agency's health effects assessment (USEPA, 2009b). Several studies suggest that nitrate in drinking water can have adverse effects on the thyroid (Mukhopadhyay *et al.,* 2005; Tajtakova *et al.,* 2006; Zaki *et al.,* 2004). Since nitrite is formed from nitrate, and the current nitrite RfD is based on nitrate data, the impact of these new data on a nitrite noncancer assessment should be evaluated. Nitrite has long been known as a competitive inhibitor of iodide uptake in the thyroid; although it is a weaker inhibitor than nitrate (Wolff and Maury, 1963). Inhibition of iodide uptake can lead to alteration in thyroid hormone levels including decreases in T4. A developmental toxicity study in rats (Vorhees *et al.,* 1984) observed statistically significant delays in swimming development in addition to pup mortality and body weight changes. Based on these considerations, a new assessment of the noncancer effects of nitrite may be warranted, including consideration of whether methemoglobinemia in infants, which is an acute effect, is still the most appropriate basis for the chronic exposure limit for nitrite. In addition, recent information may suggest the consideration of separate acute and chronic values for nitrite.

The health effects review identified a number of relevant new studies that may warrant a review of the cancer classification for nitrate. These studies include a number of new epidemiology studies (Cocco *et al.,* 2003; Coss *et al.,* 2004; de Roos *et al.,* 2003; Mueller *et al.,* 2004; Volkmer *et al.,* 2005; Ward *et al.,* 2003; Ward *et al.,* 2005a; Ward *et al.,* 2005b; Ward *et al.,* 2006; Yang *et al.,* 2007; Zeegers *et al.,* 2006). In addition, a recent report from an International Agency for Research on Cancer (IARC) Working group (Grosse *et al.,* 2006) concluded that, under conditions that result in endogenous nitrosation, ingested nitrate or nitrite is probably carcinogenic to humans.

In light of this information, EPA considers nitrite as a potential candidate for a new health effects assessment. The Agency solicits feedback on its plans to reassess health risks resulting from exposure to nitrite. The Agency also welcomes any scientific information related to nitrite health risks from the public. Because EPA considers nitrite as a candidate for a new assessment, EPA does not believe it is appropriate to consider any possible revisions to the MCLG (as well as the MCL) at this time.

A review of analytical or treatment feasibility is not necessary for nitrite because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the nitrite NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* The Agency is considering whether to initiate a new health assessment for nitrite and therefore does not believe a revision to the NPDWR is appropriate at this time.

As discussed in Section VII, the Agency is requesting input and information about several implementation issues related to nitrite (*see* section V.B.6).

51. Oxamyl (Vydate)

a. *Background.* EPA published the current NPDWR for oxamyl on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.2 mg/L. EPA based the MCLG on a reference dose of 0.025 mg/kg-day and a cancer classification of E, evidence of non-carcinogenicity for humans.

b. *Technical Reviews.* In 2000, the Agency updated its health effects assessment of oxamyl (USEPA, 2000a). The Agency identified a change in this assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of oxamyl including developmental and reproductive toxicity. The assessment revised the RfD from 0.025 mg/kg-day to 0.001 mg/kg-day and concluded that there is evidence that oxamyl is noncarcinogenic to humans (USEPA, 2000a). Based on the new OPP assessment and RfD of 0.001 mg/kg-day, and assuming a 10-kg child body weight and 1 liter water intake per day, the DWEL could be 0.01 mg/L.[21] An RSC of 20 percent was selected based on the actual food dietary exposure (81 percent) for children who are 1 to 6 years old (USEPA, 2000a); this RSC results in a possible MCLG of 0.002 mg/L (USEPA, 2009b).

Because of a possible change in the MCLG for oxamyl, EPA considered whether analytical feasibility is likely to be a limitation if the Agency were to consider lowering the MCL to 0.002 mg/L (the possible MCLG). EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if it might be possible to recalculate the PQL, which is 0.02 mg/L and might be a limit to a possible MCLG of 0.002 mg/L (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for oxamyl are below 75 percent for most studies with true concentrations below the

[21] A child's body weight and drinking water intake were used to calculate the DWEL because children are the population with the highest risk from dietary exposure.

current PQL of 0.02 mg/L. More recent PT data from late 1999 through 2004, supplied by a PT provider, show no results below the current PQL but had most passing rates above 75 percent with true values at or above the current PQL. Given the variable results from the PE and PT studies, and the lack of PT data below the current PQL, PE and PT data are insufficient to support a PQL reduction (USEPA, 2009c).

While the PT data are not sufficient to support a lowering of the PQL for oxamyl at this time, the present PQL of 0.02 mg/L is greater than the possible MCLG. It would therefore limit a possible revision to the MCL. EPA evaluated two alternative sources of information to determine whether they indicate any potential to quantitate at levels as low as the possible MCLG: laboratory minimum reporting levels in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of oxamyl (Methods 531.1 and 531.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 52,201 samples. Of these, 45,290 (87 percent) have an MRL value of 0.002 mg/L or lower. Because more than 80 percent of the MRL values are at or below the possible MCLG of 0.002 mg/L, EPA selected that value as the minimum threshold for the occurrence and exposure analysis (USEPA, 2009e). Method 531.1 has an MDL of 0.00086 mg/L, and Method 532.2 has a detection limit (DL) of 0.000065 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.00065 to 0.0086 mg/L, which contains the possible MCLG (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, there is evidence of a potential to lower the PQL for oxamyl even though the PE and PT data are insufficient to support a PQL reduction. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of oxamyl at the possible MCLG of 0.002 mg/L (USEPA, 2009f). Table VI–22 shows the results of the occurrence and exposure analysis for the current MCL and the possible MCLG. The analysis uses single sample or peak results instead of system average results because the health endpoint is associated with acute exposure.[22] The occurrence and exposure analysis shows that individual sample concentrations exceed the current MCL of 0.2 mg/L for one of 30,876 systems (0.003 percent) serving 200 people (or 0.000 percent of 167 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on running annual average concentrations at entry points; SDWIS/FED indicates no MCL violations for oxamyl between 1998 and 2005 (USEPA, 2007g). Individual sample concentrations at 18 of 30,876 systems (0.058 percent), serving fewer than 0.3 million people (0.177 percent), exceeded the possible MCLG of 0.002 mg/L at least one time between 1998 and 2005.

TABLE VI–22—NUMBER AND PERCENT OF SYSTEMS WITH PEAK CONCENTRATIONS EXCEEDING OXAMYL THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with any sample that is greater than the regulatory or health-based threshold (Percentages based on 30,876 systems with oxamyl data in the six-year review ICR occurrence dataset)
MCL (0.2 mg/L)	1 (0.003%)
Possible MCLG (0.002 mg/L)	18 (0.058%)
Regulatory or health-based threshold	**Corresponding population served (Percentages based on 167,378,400 people served by the systems with oxamyl data in the Six-Year Review ICR occurrence dataset)**
MCL (0.2 mg/L)	200 (0.0001%)
Possible MCLG (0.002 mg/L)	297,000 (0.177%)

Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for oxamyl, EPA does not believe a revision to the NPDWR for oxamyl is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for oxamyl is likely to provide a meaningful opportunity for health risk reductions. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

52. Pentachlorophenol

a. *Background.* EPA published the current NPDWR for pentachlorophenol on July 1, 1991 (56 FR 30266 (USEPA, 1991b)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.001 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to pentachlorophenol. The revised health effects assessment will consider relevant

[22] The Six-Year Review ICR occurrence data are based on the Standardized Monitoring Framework for synthetic organic compounds, which is designed to evaluate long-term exposure to contaminants with chronic exposure health endpoints. As a result, EPA recognizes that short-term seasonal peaks, which correspond to oxamyl application as a pesticide, cannot be readily detected in this dataset. Nonetheless and as noted, EPA used the peak concentrations to evaluate occurrence for oxamyl because the health endpoint is associated with acute exposure.

studies on the toxicity of pentachlorophenol, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although a risk assessment is in process for pentachlorophenol, the existing MCLG is zero and the current MCL of 0.001 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Several passing rates in the PE data for pentachlorophenol available through late 1999 are below 75 percent, and none of the true concentrations were below the current PQL. There are six PE studies with passing rates equal to or less than the 75 percent criterion, and only one of 16 true values in the PE data is below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, show passing rates below the 75 percent criterion for eight studies, and all of the true concentrations in the PT data were higher than the current PQL. Because of the variability in passing rates and the lack of data points below the current PQL, a lowering of the PQL for pentachlorophenol is not appropriate at this time (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of pentachlorophenol (Methods 515.1, 515.2, and 525.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 59,594 samples. Fewer than 80 percent of these values are less than or equal to the modal MRL: 26,666 (45 percent) equal the modal MRL of 0.00004 mg/L and an additional 2,399 (4 percent) are lower than 0.00004 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods are 0.000032, 0.00016, and 0.001 mg/L. EPA selected the median value, applied a multiplier of 10, and rounded up to 0.002 mg/L. The result is higher than the current PQL and, therefore, EPA did not estimate an EQL (USEPA, 2009e). Based on these varied and unrelated approaches/sources of information, EPA believes that there is no potential to lower the PQL for pentachlorophenol. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for pentachlorophenol is appropriate at this time because a reassessment of the health risks resulting from exposure to pentachlorophenol is in progress (USEPA, 2009b). Furthermore, a review of analytical feasibility did not identify a potential to revise the MCL, which is limited by feasibility.

53. Picloram

a. *Background.* EPA published the current NPDWR for picloram on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.5 mg/L. EPA based the MCLG on a reference dose of 0.07 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In the first Six-Year Review cycle, EPA evaluated new information from a health effects assessment completed in 1995 (USEPA, 1995b). At that time, the Agency could not determine that a revision to the NPDWR would provide a meaningful opportunity for cost savings to public water systems or their customers, and decided that any revision would be a low priority activity for the Agency because of competing workload priorities, the administrative costs associated with rulemaking, and the burden on States and the regulated community to implement any regulatory change (67 FR 19030 (USEPA, 2002c); 68 FR 42908 (USEPA, 2003e)). The 1995 assessment considered relevant studies on the toxicity of picloram including developmental and reproductive toxicity. The assessment revised the RfD from 0.07 mg/kg-day to 0.2 mg/kg-day and classified picloram as Group E, evidence of noncarcinogenicity (USEPA, 1995b). In the current review cycle, EPA conducted a literature search through June 2007 for relevant data on the toxicology of picloram, including its potential developmental and reproductive toxicity. The literature search did not identify any new data that would affect the RfD or cancer classification (USEPA, 2009b). Based on the 1995 OPP assessment and RfD of 0.2 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 7 mg/L. An RSC of 20 percent results in a possible MCLG of 1 mg/L (USEPA, 2009b).

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the results of the occurrence and exposure analyses for picloram to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for picloram, its usefulness is limited for determining potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–23 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA data. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at threshold levels of interest. This information indicates that any resulting NPDWR change would not affect systems that rely on source water at any of the NAWQA or STORET locations.

TABLE VI–23—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR PICLORAM

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	870 (100%)	5,772 (100.0%)
Nondetect	745 (85.6%)	5,733 (99.3%)
Detected	125 (14.4%)	39 (0.7%)

TABLE VI–23—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR PICLORAM—Continued

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Exceeds current MCLG of 0.5 mg/L	0 (0%)	0 (0.0%)
Exceeds alternative value of 1.0 mg/L	0 (0%)	0 (0.0%)

[1] STORET database 2002–2007.
[2] NAWQA database 1992–2005.
Source: USEPA, 2009d.

The BATs and small system compliance technologies for picloram have other beneficial effects, *e.g.,* reduction of other co-occurring contaminants, precursors for DBPs, or other common impurities. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.5 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for picloram, EPA does not believe a revision to the NPDWR for picloram is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for picloram is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

54. Polychlorinated Biphenyls (PCBs)

a. *Background.* EPA published the current NPDWR for PCBs on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.0005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the cancer health risks resulting from exposure to PCBs. The revised health effects assessment will consider relevant studies on the toxicity of PCBs, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). On December 21, 2007 (72 FR 72715 (USEPA, 2007c)), the Agency noted that the health effects assessment for PCBs is in process.

Although a risk assessment is in process for PCBs, the existing MCLG is zero and the current MCL of 0.0005 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). The PE data for PCBs available through late 1999 includes only one true concentration below the current PQL, and the passing rate for that concentration is below 75 percent. The passing rates for studies above the PQL are above 75 percent. More recent PT data from late 1999 through 2004, supplied by a PT provider, show passing rates above 75 percent for all studies, but includes no studies below the current PQL. Because of the lack of data points below the current PQL, a lowering of the PQL for PCBs is not appropriate at this time (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDL for the approved method for the detection of PCBs (Method 508A). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 35,178 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 23,785 (68 percent) equal the modal MRL of 0.0001 mg/L and an additional 2,355 (7 percent) are lower than 0.0001 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDL of approved method is 0.00008 mg/L. Applying a multiplier of 10 would give a possible PQL of 0.0008 mg/L. The result is higher than the current PQL, and therefore, EPA did not estimate an EQL (USEPA, 2009e). Based on these varied and unrelated approaches/sources of information, EPA believes that there is no potential to lower the PQL for PCBs. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for PCBs is appropriate at this time because a reassessment of the health risks resulting from exposure to PCBs is in progress (USEPA, 2009b). Furthermore, a review of analytical feasibility did not identify a potential to revise the MCL, which is limited by feasibility.

55. Combined Radiums (226 and 228)

a. *Background.* EPA published an interim NPDWR and set an MCL of 5 pCi/L for combined radium 226 and 228 on July 9, 1976 (41 FR 28402 (USEPA, 1976)). As noted in the August 14, 1975 proposal (40 FR 34324 (USEPA, 1975)) and a subsequent September 30, 1986 FR notice, EPA considered the feasibility of treatment techniques, analytical methods and monitoring when establishing the MCL of 5 pCi/L. EPA also considered the risks associated with exposure to radium 226 and 228, which generally fell within the Agency's acceptable risk range of 10^{-4} to 10^{-6} at the MCL of 5 pCi/L. On December 7, 2000 (65 FR 76708 (USEPA, 2000c)), EPA established an MCLG of zero based on a cancer classification of A (known

human carcinogen) and finalized the NPDWR by retaining the MCL of 5 pCi/L. EPA noted in the December 7, 2000 FR notice that new risk estimates from Federal Guidance Report 13 reaffirmed that the 5 pCi/L MCL was appropriate and protective.[23] EPA also tightened the monitoring requirements for combined radiums by requiring that systems monitor for radium 226 and 228 separately.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to radiums. The revised health effects assessment will consider relevant studies on the toxicity of radiums, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b).

Although there is an ongoing health effects assessment, the MCLG is zero and the current MCL is higher than the MCLG. Therefore, EPA reviewed whether there is potential to revise the MCL based on new information regarding analytical and treatment feasibility for radiums. EPA promulgated detection limits of 1 pCi/L for both radium 226 and radium 228 in 1976 (41 FR 28402 (USEPA, 1976)) and retained the use of a detection limit as the required measure of sensitivity for radiochemical analysis in lieu of an MDL or PQL in the final rule (65 FR 76708, December 7, 2000 (USEPA, 2000c)). EPA did not identify new analytical methods during the current review that would feasibly lower the detection limits. In addition, since the December 7, 2000, regulation, there is no new information regarding treatment feasibility. Since there is no new information regarding analytical or treatment feasibility that suggests changes to the MCL, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for combined radiums is appropriate at this time because a reassessment of the health risks resulting from exposure to radium is in progress (USEPA, 2009b). Furthermore, there is no new information regarding analytical or treatment feasibility that would warrant reconsideration of the MCL.

56. Selenium

a. *Background.* EPA published the current NPDWR for selenium on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.05 mg/L. EPA based the MCLG on a maximum safe intake[24] of 0.4 mg/person/day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* The health effects technical review identified new data that relate to the biological properties of selenium in mammalian species, as well as data regarding its cancer and anticancer properties, that may indicate the need to update the Agency's health effects assessment (USEPA, 2009b). Hawkes and Keim (2003) reported thyroid hormone and related metabolism changes in subjects treated with deficient, sufficient, and excess dietary selenium. The excess selenium dose was associated with a slight decrease in triiodothyronine (T3) levels, a thyrotropin increase, and an increase in body weight compared to the selenium-sufficient subjects. The opposite responses occurred in the selenium-deficient subjects. Several studies identified changes in sperm parameters and fertility in mice fed either selenium-deficient or excess-selenium diets compared to diets with adequate selenium. In addition, new information about the metabolism of selenium since the IRIS review (USEPA, 1991a, 1993a) suggests that it may be appropriate to differentiate between inorganic selenium and organic selenium in the form of selenoproteins and selenoaminoacids for an assessment that applies to drinking water. Although selenium is not a candidate for an MCLG of zero because of its status as a micronutrient, new data relevant to the cancer assessment are now available (*e.g.,* Duffield-Lillico *et al.,* 2003; Su *et al.,* 2005) and may need further evaluation.

In light of this information, EPA considers selenium as a potential candidate for a new health effects assessment. The Agency solicits general feedback on its plans to reassess health risks resulting from exposure to selenium. The Agency also welcomes any scientific information related to selenium health risks from the public. Because EPA considers selenium as a candidate for a new assessment, EPA does not believe it is appropriate to consider any revisions to the MCLG (as well as the MCL) at this time.

A review of analytical or treatment feasibility is not necessary for selenium because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the selenium NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* The Agency is considering whether to initiate a new health assessment for selenium and therefore does not believe a revision to the NPDWR is appropriate at this time.

57. Simazine

a. *Background.* EPA published the current NPDWR for simazine on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.004 mg/L. EPA based the MCLG on a reference dose of 0.005 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* In 2006, the Agency finalized a health effects assessment for the reregistration of simazine as a pesticide (USEPA, 2006i). Because the database for simazine's potential neuroendocrine effects is less robust than the atrazine database, and because simazine and atrazine share a common neuroendocrine mechanism of toxicity, the atrazine data were used as bridging data for simazine. Thus, the 2006 assessment established a new RfD of 0.018 mg/kg-day for simazine, based on the attenuation of pre-ovulatory LH surge from atrazine exposure. Similarly, simazine was reclassified in 2006 as "not likely to be carcinogenic to humans" based on weight-of-evidence that it is not genotoxic and because the tumor response in the Sprague-Dawley rats was determined to be a strain specific mechanism which is not relevant to humans.

c. *Review Result.* The Agency believes it is not appropriate to consider revisions to the NPDWR for simazine at this time and has placed simazine in the emerging information/data gap category because of an impending re-evaluation of the Agency's risk assessment for atrazine and the assessment for simazine is based on atrazine data. *See* section VI.7 (atrazine) for additional information.

[23] After the December 7, 2000 final regulation, two trade associations and several municipal water systems challenged EPA's standard for combined radiums by claiming that the Agency did not use the best available science when finalizing the standard. In February of 2003, the DC Circuit Court of Appeals upheld EPA's regulation for combined radiums (as well as beta and photon emitters and uranium).

[24] The 0.4 mg/day safe level was based on data (Yang *et al.,* 1989a, 1989b) that extrapolated from blood selenium levels to estimated dietary intake in the studied population. As described in the January 30, 1991 FR (56 FR 3526 (USEPA, 1991c)), the Agency partially considered selenium's status as a nutrient and did not use the typical procedure for deriving the MCLG. Hence, there is no specific reference to an RfD for selenium in the 1991 FR notice. After the publication of the regulation, IRIS (USEPA, 1991a) posted an RfD of 0.005 mg/kg-day for selenium using the same data that are the basis of the regulation.

58. Styrene

a. *Background.* EPA published the current NPDWR for styrene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.1 mg/L. EPA based the MCLG on a reference dose of 0.2 mg/kg-day and a cancer classification of C, possible human carcinogen.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to styrene. The revised health effects assessment will consider relevant studies on the toxicity of styrene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* Since the MCL for styrene is set at its MCLG and a reassessment of the health risks resulting from exposure to styrene is in progress, the Agency does not believe a revision to the NPDWR is appropriate at this time.

59. 2,3,7,8-TCDD (Dioxin)

a. *Background.* EPA published the current NPDWR for dioxin on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 3×10^{-8} mg/L, based on analytical feasibility.

b. *Technical Reviews.* In 2003, the Agency prepared a draft human health reassessment for dioxin and its related compounds (USEPA, 2003c) that underwent external review by the National Academy of Science. In their peer review report (NAS, 2006), NAS recommended that EPA reevaluate its conclusions regarding the carcinogenicity of dioxin based on the criteria set out in the 2005 cancer guidelines; that EPA should consider developing more information on the noncancer effects of dioxin; and that EPA evaluate new dose-response data released by the NTP. The Agency is currently considering the NAS recommendations. The Agency does not expect any new health effects assessment to be completed in the time frame of the current Six-Year Review cycle (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although a health effects assessment is in process for dioxin, the existing MCLG is still zero and the current MCL is based on a PQL of 3×10^{-8} mg/L. Therefore, EPA reviewed whether there is potential to revise the PQL. The PT data currently available for dioxin are not sufficient to evaluate the potential for PQL revision (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDL for the approved method for the detection of dioxin (Method 1613). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains dioxin data for fewer than 2,500 systems, which is an insufficient sample size to derive an EQL based on MRL data. The MDL of the approved method is 1×10^{-8} mg/L. Applying a multiplier of 5 would yield an EQL of 5×10^{-8} mg/L. The result is slightly higher than the current PQL and, therefore, EPA did not estimate an EQL. Based on these varied and unrelated approaches/sources of information, EPA believes that a PQL reduction for dioxin is not appropriate at present. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for dioxin is appropriate at this time because a reassessment of the health risks resulting from exposure to dioxin is in progress (USEPA, 2009b). Furthermore, a review of analytical feasibility did not identify a potential to revise the MCL, which is limited by feasibility.

60. Tetrachloroethylene

a. *Background.* EPA published the current NPDWR for tetrachloroethylene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to tetrachloroethylene. The revised health effects assessment will consider relevant studies on the toxicity of tetrachloroethylene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment and indicates that tetrachloroethylene is currently undergoing review by NAS.

Although a risk assessment is in process for tetrachloroethylene, the existing MCLG is zero and the current MCL of 0.005 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL could be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for tetrachloroethylene are above 95 percent at the lowest concentrations. However, the true concentrations were all higher than the current PQL of 0.005 mg/L. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 90 percent passing rates for studies around the current PQL, including 13 with true values below the PQL. Because most of the laboratory passing rates from PE and PT studies exceeded the 75 percent criterion typically used to derive a PQL, including several with true values below the PQL, a lowering of the PQL for tetrachloroethylene might be possible. These results, however, are insufficient to recalculate a revised PQL for tetrachloroethylene because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: Laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of tetrachloroethylene (Methods 502.2, 524.2, and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. EPA also noted that the State of New Jersey uses a PQL of 0.001 mg/L, based on a 1987 study of laboratory performance at low concentrations that used criteria similar to those in the PT data (NJDWQI, 1987). The Six-Year Review ICR dataset contains MRL values for 138,348 samples. More than 80 percent of these values are less than

or equal the modal MRL: 117,033 (85 percent) equal the modal MRL of 0.0005 mg/L and an additional 15,848 (11 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved method are 0.00005, 0.00014, and 0.000008 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.00008 to 0.0014 mg/L, which contains the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for tetrachloroethylene. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of tetrachloroethylene at the EQL of 0.0005 mg/L and additional thresholds of 0.001 and 0.0025 mg/L. Table VI–24 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for 23 to 25 out of 50,436 systems (0.046 to 0.050 percent) serving approximately 630, 000 to 1.1 million people (or 0.277 to 0.473 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates 174 MCL violations for tetrachloroethylene between 1998 and 2005, with annual violations ranging from 10 to 33 (USEPA, 2007g). Average concentrations at 412 to 519 of 50,436 systems (0.817 to 1.029 percent), serving 12.4 to 14.6 million people (or 5.466 to 6.419 percent of 227 million people), exceed the lowest EQL of 0.0005 mg/L. While these systems are widely distributed and located in most of the States providing data, a few large systems (serving 500,000 or more people) account for almost half of the exposed population.

TABLE VI–24—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING TETRACHLOROETHYLENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (Percentages based on 50,436 systems with tetrachloroethylene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL[1]	Nondetect values = ½ MRL[2]	Nondetect values = 0[3]
MCL (0.005 mg/L)	25 (0.050%)	23 (0.046%)	23 (0.046%)
1/2 MCL (0.0025 mg/L)	75 (0.149%)	71 (0.141%)	68 (0.135%)
2xEQL (0.001 mg/L)	286 (0.568%)	251 (0.498%)	220 (0.437%)
EQL (0.0005 mg/L)	not applicable	519 (1.030%)	412 (0.818%)
Regulatory or feasibility-based threshold	Corresponding population served (Percentages based on 227,009,000 people served by the systems with tetrachloroethylene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL[1]	Nondetect values = ½ MRL[2]	Nondetect values = 0[3]
MCL (0.005 mg/L)	1,074,000 (0.473%)	628,000 (0.277%)	628,000 (0.277%)
½ MCL (0.0025 mg/L)	1,706,000 (0.752%)	1,692,000 (0.745%)	1,647,000 (0.726%)
2xEQL (0.001 mg/L)	10,706,000 (4.716%)	10,177,000 (4.483%)	9,625,000 (4.240%)
EQL (0.0005 mg/L)	not applicable	14,572,000 (6.419%)	12,408,000 (5.466%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that a revision to the MCL may provide a meaningful opportunity to improve the level of public health protection, EPA considered whether treatment feasibility is likely to pose any limitations if the MCL were lowered (USEPA, 2009g). The current BATs for tetrachloroethylene are packed tower aeration (PTA) and granular activated carbon (GAC). Small system compliance technologies (SSCTs) for tetrachloroethylene include GAC and several aeration technologies. EPA's assessment shows that PTA and GAC are effective enough to achieve concentrations as low as the EQL.

EPA is not currently able to assess the potential health benefits from a revised MCL for tetrachloroethylene, because the revised health effects assessment is not yet available. However, based on its B2 cancer classification (MCLG of zero) and the occurrence and exposure analysis at possible MCL values, the Agency believes that a revision to the MCL may provide a meaningful opportunity to reduce public health risks.

c. *Review Result.* The Agency believes it is appropriate to revise the NPDWR for tetrachloroethylene although a health effects assessment is currently in progress. The existing MCLG is zero (based on the current B2 cancer classification) and the current MCL is based on a PQL (*i.e.,* analytical feasibility) of 0.005 mg/L. The Agency's review indicates that analytical feasibility could be as much as 10 times lower (~ 0.0005 mg/L) and occurrence at this level appears to be relatively widespread. Hence, revisions to the tetrachloroethylene NPDWR may provide a meaningful opportunity for health risk reduction. If the updated health effects assessment is completed in time to consider for the regulatory revision of tetrachloroethylene, the Agency will consider this assessment in its evaluation of public health benefits associated with any revision. As discussed in Section VII, the Agency solicits public comment and/or relevant information that may inform the regulatory revision for tetrachloroethylene. EPA is also requesting that stakeholders provide information/data about the lowest level of quantitation (including the analytical method used) that laboratories can reliably and consistently achieve.

61. Thallium

a. *Background.* EPA published the current NPDWR for thallium on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of 0.0005 mg/L. EPA based the MCLG on a reference dose of 0.00007 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity. The NPDWR also established an MCL of 0.002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA completed the risk reassessment for thallium in September of 2009 (USEPA, 2009k). Because the new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b), the outcome of this assessment has not been included in the current review effort. EPA will consider the updated assessment in the next review cycle.

The current MCL is based on a PQL of 0.002 mg/L. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for thallium are above 80 percent around the current PQL of 0.002 mg/L, including one study with a true concentration less than the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, show passing rates at or above 75 percent, but tending to fall below 80 percent as the true concentration approaches the current PQL. No studies had true concentrations below the current PQL. Given the lack of data points below the current PQL and the low PT passing rates close to the PQL, a lowering of the PQL for thallium is not appropriate at this time (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of thallium (Methods 200.8 and 200.9). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 73,409 samples. Fewer than 80 percent of these values are less than or equal the modal MRL: 46,273 (63 percent) equal the modal MRL of 0.001 mg/L and an additional 11,032 (15 percent) are lower than 0.001 mg/L. Therefore, EPA did not set the EQL equal to the modal MRL (USEPA, 2009e). The MDLs of approved methods range from 0.0003 to 0.0007 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.003 to 0.007 mg/L. The result is higher than the current PQL and, therefore, EPA did not estimate an EQL (USEPA, 2009e). Based on these varied and unrelated approaches/sources of information, EPA believes that there is no potential to lower the PQL for thallium. Since the MCL is constrained by the PQL, and the PQL is unchanged, EPA does not believe it is necessary to conduct an occurrence analysis at this time.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for thallium is appropriate at this time because a reassessment of the health risks resulting from exposure to thallium was in progress (USEPA, 2009k) and did not meet the March 1, 2009 cutoff date for this review. Furthermore, a review of analytical feasibility did not identify a potential to revise the MCL, which is limited by feasibility.

62. Toluene

a. *Background.* EPA published the current NPDWR for toluene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 1 mg/L. EPA based the MCLG on a reference dose of 0.2 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2005, the Agency updated its health effects assessment of toluene (USEPA, 2005b). The change in this assessment could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of toluene including developmental and reproductive toxicity. The assessment revised the RfD from 0.2 mg/kg-day to 0.08 mg/kg-day and concluded that there is inadequate information to assess the carcinogenic potential of toluene (USEPA, 2005b). Although there were no changes in the critical study or effect, there were changes in the toxicity database that increase concern for immunotoxicity and neurotoxicity via the oral exposure route and justified the higher uncertainty factor for the revised RfD (USEPA, 2005b). Based on the new IRIS assessment and RfD of 0.08 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 2.8 mg/L. An RSC of 20 percent results in a possible MCLG of 0.6 mg/L.

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor for the possible MCLG decrease under consideration. EPA evaluated the results of the occurrence and exposure analyses for toluene to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to improve the level of public health protection (USEPA, 2009f). Table VI–25 shows the results of the occurrence and exposure analysis for the current MCL and the possible MCLG set equal to 0.6 mg/L based on the new health effects information. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for one system out of 50,451 (0.002 percent) serving approximately 500 people (0.0002 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates MCL violations for toluene at only one system in one year between 1998 and 2005 (USEPA, 2007g). Average concentrations at two of 50,451 systems (0.004 percent), serving 800 people (or 0.0004 percent of 227 million people), exceed the possible MCLG based on new health effects information (0.06 mg/L).

TABLE VI–25—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING TOLUENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with mean concentrations that are greater than the regulatory or health-based threshold (percentages based on 50,451 systems with toluene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (1 mg/L)	1 (0.002%)	1 (0.002%)	1 (0.002%)
Possible MCLG (0.6 mg/L)	2 (0.004%)	2 (0.004%)	2 (0.004%)
Regulatory or health-based threshold	Corresponding population served (percentages based on 226,955,000 people served by the systems with toluene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (1 mg/L)	500 (0.0002%)	500 (0.0002%)	500 (0.0002%)
Possible MCLG (0.6 mg/L)	800 (0.0004%)	800 (0.0004%)	800 (0.0004%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for toluene, EPA does not believe a revision to the NPDWR for toluene is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for toluene is likely to provide a meaningful opportunity for health risk reductions. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

63. Toxaphene

a. *Background.* EPA published the current NPDWR for toxaphene on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.003 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of toxaphene as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for toxaphene at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of toxaphene is not warranted at this time.

The current MCL for toxaphene is based on a PQL of 0.003 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of toxaphene might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for toxaphene are generally above 90 percent around the current PQL of 0.003 mg/L, including three studies with true values below the current PQL. All passing rates in the PE data exceeded 80 percent. More recent PT data from late 1999 through 2004, supplied by a PT provider, show greater than 80 percent passing rates for a majority of studies, but there are no studies with true values below the current PQL. There are two PT studies with passing rates equal to or below 75 percent, at true values well above the current PQL. Despite this variability, most of the laboratory passing rates from PE and PT studies exceeded the 75 percent criterion typically used to derive a PQL, including three with true values below the PQL. Therefore, a lowering of the PQL for toxaphene might be possible. These results, however, are insufficient to recalculate a revised PQL for toxaphene because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of toxaphene (Methods 505, 508.1, and 525.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 54,529 samples. More than 80 percent of these values are less than or equal the modal MRL: 36,763 (67 percent) equal the modal MRL of 0.001 mg/L and an additional 8,525 (16 percent) are lower than 0.001 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods are 0.0017, 0.001, and 0.00013 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0013 to 0.017 mg/L, which is above the EQL, but includes values below the PQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there may be potential to lower the PQL for toxaphene. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of toxaphene at the EQL of 0.001 mg/L and an additional threshold of 0.0015 mg/L (USEPA, 2009f). Table VI–26 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis

shows that average concentrations exceed the current MCL for three to four of 30,387 systems (0.010 to 0.013 percent) serving 23,000 people (or 0.014 percent of 160 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates three MCL violations for toxaphene between 1998 and 2005 (USEPA, 2007g). Average concentrations at five of 30,387 systems (0.016 percent), serving 23,000 people (or 0.015 percent of 160 million people), exceed the EQL of 0.001 mg/L.

TABLE VI–26—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING TOXAPHENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 30,387 systems with toxaphene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.003 mg/L)	4 (0.013%)	3 (0.010%)	3 (0.010%)
½ MCL (0.0015 mg/L)	5 (0.016%)	5 (0.016%)	5 (0.016%)
EQL (0.001 mg/L)	not applicable	5 (0.016%)	5 (0.016%)
Regulatory or feasibility-based threshold	Corresponding population served (percentages based on 160,012,000 people served by the systems with toxaphene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.003 mg/L)	23,000 (0.014%)	23,000 (0.014%)	23,000 (0.014%)
½ MCL (0.0015 mg/L)	23,000 (0.014%)	23,000 (0.014%)	23,000 (0.014%)
EQL (0.001 mg/L)	not applicable	23,000 (0.014%)	23,000 (0.014%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.001 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for toxaphene is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

64. 2,4,5-TP (Silvex; 2,4,5-Trichlorophenoxypropionic Acid)

a. *Background.* EPA published the current NPDWR for 2,4,5-TP on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 0.05 mg/L. EPA based the MCLG on a reference dose of 0.008 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of 2,4,5-TP, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

A review of analytical or treatment feasibility is not necessary for 2,4,5-TP because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the 2,4,5-TP NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* EPA's review shows that there are no data supporting a change to the 2,4,5-TP NPDWR. As a result, a revision to the NPDWR would not be appropriate at this time.

65. 1,2,4-Trichlorobenzene

a. *Background.* EPA published the current NPDWR for 1,2,4-trichlorobenzene on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG and an MCL of 0.07 mg/L. EPA based the MCLG on a reference dose of 0.01 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* The health effects technical review identified information regarding the carcinogenicity of 1,2,4-trichlorobenzene, as well as its noncancer effects, that may indicate the need to update the Agency's health effects assessment (USEPA, 2009b). Two chronic carcinogenicity studies of 1,2,4-trichlorobenzene, one in mice (Moore, 1994a) and one in rats (Moore, 1994b), reported liver effects in both mice and rats, as well as kidney effects in rats. Mice appeared more sensitive than rats for noncancer effects, and mice also demonstrated a significant treatment-related increase in the incidence of hepatocellular carcinomas. No increased incidence of any tumor type was observed in rats. These health effect data could have implications for the 1,2,4-trichlorobenzene MCLG because they identify effect levels for noncancer effects in the liver and kidney, as well as evidence of carcinogenicity in mice.

In light of this information, EPA considers 1,2,4-trichlorobenzene as a potential candidate for a new health effects assessment. The Agency solicits general feedback on its plans to reassess health risks resulting from exposure to 1,2,4-trichlorobenzene. The Agency also welcomes any scientific information related to 1,2,4-trichlorobenzene health risks from the public. Because EPA considers 1,2,4-trichlorobenzene as a candidate for a new assessment, EPA does not believe it is appropriate to consider revisions to the MCLG (as well as the MCL) at this time.

A review of analytical or treatment feasibility is not necessary for 1,2,4-trichlorobenzene because changes to the MCLG are not warranted at this time and the current MCL is set at the MCLG. Since EPA did not identify a health or technology basis for revising the 1,2,4-trichlorobenzene NPDWR, the Agency did not conduct a detailed occurrence and exposure analysis.

c. *Review Result.* The Agency is considering whether to initiate a new health assessment for 1,2,4-trichlorobenzene and therefore does not believe a revision to the NPDWR is appropriate at this time.

66. 1,1,1-Trichloroethane

a. *Background.* EPA published the current NPDWR for 1,1,1-trichloroethane on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG and an MCL of 0.20 mg/L. EPA based the MCLG on a reference dose of 0.035 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2007, the Agency updated its health effects assessment of 1,1,1-trichloroethane (USEPA, 2007d). The Agency identified a change in this assessment that could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of 1,1,1-trichloroethane including developmental and reproductive toxicity. The assessment revised the RfD from 0.035 mg/kg-day to 2 mg/kg-day and concluded that there is inadequate information to assess the carcinogenic potential of 1,1,1-trichloroethane (USEPA, 2007d). Based on the new IRIS assessment and RfD of 2 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 70 mg/L. An RSC of 20 percent results in a possible MCLG of 14 mg/L (USEPA, 2009b).

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor if EPA were to raise the MCLG. EPA evaluated the results of the occurrence and exposure analyses for 1,1,1-trichloroethane to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to achieve cost savings for PWSs and their customers while maintaining, or improving, the level of public health protection (USEPA, 2009f). Although the Agency obtained and evaluated the finished water occurrence data for 1,1,1-trichloroethane, its usefulness is limited for determining potential cost savings to PWSs and their customers because the Agency does not know which systems are treating for this contaminant. As an alternative, the Agency evaluated available data on source water quality and conducted a qualitative assessment of treatment cost savings.

Table VI–27 provides summary data for contaminant occurrence based on maximum sample values for the locations included in the STORET and NAWQA data. Although the degree to which these occurrence rates represent national drinking water source occurrence is uncertain, the information shows no to low occurrence at threshold levels of interest. This information indicates that any resulting NPDWR change would affect systems that rely on source water at none of the NAWQA locations and at less than 0.1 percent of the STORET locations.

TABLE VI–27—AMBIENT WATER QUALITY MONITORING OCCURRENCE SUMMARY FOR 1,1,1-TRICHLOROETHANE

Maximum concentration	Number of locations (% of locations)	
	STORET [1]	NAWQA [2]
Total	3,429 (100.0%)	5,788 (100.0%)
Nondetect	2,304 (67.2%) ...	5,290 (91.4%)
Detected	1,125 (32.8%) ...	498 (8.6%)
Exceeds current MCLG of 0.2 mg/L	5 (0.1%)	0 (0.0%)
Exceeds alternative value of 14 mg/L	0 (0.0%)	0 (0.0%)

[1] STORET database 2002–2008.
[2] NAWQA database 1992–2008.
Source: USEPA, 2009d.

The BATs and small system compliance technologies for 1,1,1-trichloroethane have other beneficial effects, *e.g.,* reduction of other co-occurring contaminants, precursors for DBPs, or other common impurities. Therefore, if EPA were to consider a higher level, the Agency does not know how many PWSs that are currently treating to comply with the existing MCL of 0.2 mg/L would be likely to discontinue treatment that is already in place (USEPA, 2009d). Also, the Agency does not know to what extent affected systems might be able to reduce costs given that capital costs are not recoverable. However, the Agency recognizes that there may be opportunities to achieve operational cost savings if these systems are able to re-optimize current treatment.

Given these considerations, the Agency believes that any resulting revision is not likely to provide a meaningful opportunity for cost savings. In view of this, any revision would be a low priority activity and not appropriate at this time.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for 1,1,1-trichloroethane, EPA does not believe a revision to the NPDWR for 1,1,1-trichloroethane is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for 1,1,1-trichloroethane is likely to provide a meaningful opportunity for cost savings to public water systems and their customers. Taking into consideration the low occurrence of this contaminant in source waters, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and

• The burden on States and the regulated community to implement any regulatory change that resulted.

67. 1,1,2-Trichloroethane

a. *Background.* EPA published the current NPDWR for 1,1,2-trichloroethane on July 17, 1992 (57 FR 31776 (USEPA, 1992)). The NPDWR established an MCLG of 0.003 mg/L. EPA based the MCLG on a reference dose of 0.004 mg/kg-day and a cancer classification of C, possible human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the toxicology of 1,1,2-trichloroethane, including its potential developmental and reproductive toxicity. The literature search did not identify any studies that warrant a review of the RfD or the cancer classification (USEPA, 2009b).

The current MCL for 1,1,2-trichloroethane is based on a PQL of 0.005 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of 1,1,2-trichloroethane might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for 1,1,2-trichloroethane are above 95 percent near the current PQL of 0.005 mg/L, but there were no PE studies with true values below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, show greater than 90 percent passing rates around the current PQL, including twelve studies with true values below the PQL. Because most of the laboratory passing rates from PT studies—including several with true concentrations below the PQL—exceeded the 75 percent criterion typically used to derive a PQL, a lowering of the PQL for 1,1,2-trichloroethane might be possible. These results, however, are insufficient to recalculate a revised PQL for 1,1,2-trichloroethane because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether they indicate any potential to quantitate at levels as low as the current MCLG: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of 1,1,2-trichloroethane (Methods 502.2 and 524.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 139,672 samples. Of these, 117,788 (84 percent) equal the modal MRL of 0.0005 mg/L. An additional 17,142 (12 percent) are lower than 0.0005 mg/L. Because more than 80 percent of the of MRLs are equal to or less than the current MCLG of 0.003 mg/L, EPA selected that value as the minimum threshold for the occurrence and exposure analysis (USEPA, 2009e). The MDLs of approved methods range from 0.00004 to 0.0001 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0004 to 0.001 mg/L, which is below the current MCLG (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for 1,1,2-trichloroethane. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of 1,1,2-trichloroethane at the current MCLG of 0.003 mg/L (USEPA, 2009f). Table VI–28 shows the results of the occurrence and exposure analysis for the current MCL and the current MCLG of 0.003 mg/L. The occurrence and exposure analysis shows that average concentrations do not exceed the current MCL for any system in the analysis. Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates six MCL violations for 1,1,2-trichloroethane between 1998 and 2005 (USEPA, 2007g). The average concentration at one out of 50,195 systems (0.002 percent), serving approximately 700 people (or 0.0003 percent of 227 million people), exceeds the current MCLG of 0.003 mg/L.

TABLE VI–28—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING 1,1,2-TRICHLOROETHANE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with mean concentrations that are greater than the regulatory or health-based threshold (percentages based on 50,195 systems with 1,1,2-trichloroethane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Current MCLG (0.003 mg/L)	1 (0.002%)	1 (0.002%)	1 (0.002%)
Regulatory or health-based threshold	Corresponding population served (Percentages based on 226,852,000 people served by the systems with 1,1,2-trichloroethane data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Current MCLG (0.003 mg/L)	700 (0.0003%)	700 (0.0003%)	700 (0.0003%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for 1,1,2-trichloroethane is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

68. Trichloroethylene

a. *Background.* EPA published the current NPDWR for trichloroethylene on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG of zero based on a cancer classification of B2, probable human carcinogen. The NPDWR also established an MCL of 0.005 mg/L, based on analytical feasibility.

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to trichloroethylene. The revised health effects assessment will consider relevant studies on the toxicity of trichloroethylene, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

Although a risk assessment is in process for trichloroethylene, the existing MCLG is zero and the current MCL of 0.005 mg/L is based on the PQL. Therefore, EPA reviewed whether there is potential to revise the PQL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for trichloroethylene are above 95 percent at the lowest concentrations. However, the true concentrations were all higher than the current PQL of 0.005 mg/L. More recent PT data from 1999 to 2004, supplied by a PT provider, also show greater than 95 percent passing rates for studies around the current PQL, including 6 with true values below the PQL. Because most of the laboratory passing rates from PE and PT studies exceeded the 75 percent criterion typically used to derive a PQL, including several with true values below the PQL, a lowering of the PQL for trichloroethylene might be possible. These results, however, are insufficient to recalculate a revised PQL for trichloroethylene because not enough data points are available below the current PQL to derive a value at the 75 percent passing rate (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of trichloroethylene (Methods 502.2, 524.2, and 551.1). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. EPA also noted that the State of New Jersey uses a PQL of 0.001 mg/L, based on a 1987 study of laboratory performance at low concentrations that used criteria similar to those in the PT data (NJDWQI, 1987). The Six-Year Review ICR dataset contains MRLs for 138,439 samples. More than 80 percent of these values are less than or equal the modal MRL: 118,193 (85 percent) equal the modal MRL of 0.0005 mg/L and an additional 17,057 (12 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range are 0.00006, 0.00019, and 0.000042 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.00042 to 0.0019 mg/L, which contains the EQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there is potential to lower the PQL for trichloroethylene. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of trichloroethylene at the EQL of 0.0005 mg/L and additional thresholds of 0.0010 and 0.0025 mg/L (USEPA, 2009f). Table VI–29 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for 25 out of 50,432 systems (0.050 percent) serving approximately 410,000 people (or 0.181 percent of 227 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates 191 MCL violations for trichloroethylene between 1998 and 2005 (USEPA, 2007g), with annual violations ranging from 12 to 31. Average concentrations at 310 to 388 of 50,432 systems (0.615 to 0.769 percent), serving approximately 12.0 to 13.0 million people (or 5.237 to 5.670 percent of 227 million people), exceed the EQL of 0.0005 mg/L. While these systems are widely distributed and located in most of the States providing data, a few large systems (serving 500,000 or more people) account for almost half of the exposed population.

TABLE VI–29—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING TRICHLOROETHYLENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 50,432 systems with trichloroethylene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	25 (0.050%)	25 (0.050%)	25 (0.050%)
½ MCL (0.0025 mg/L)	70 (0.139%)	68 (0.135%)	64 (0.127%)
2xEQL (0.001 mg/L)	239 (0.474%)	208 (0.412%)	182 (0.361%)
EQL (0.0005 mg/L)	not applicable	388 (0.769%)	310 (0.615%)
Regulatory or feasibility-based threshold	Corresponding population served (percentages based on 226,908,000 people served by the systems with trichloroethylene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect Values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.005 mg/L)	410,000 (0.181%)	410,000 (0.181%)	410,000 (0.181%)
½ MCL (0.0025 mg/L)	4,765,000 (2.100%)	4,691,000 (2.067%)	4,598,000 (2.026%)
2xEQL (0.001 mg/L)	10,367,000 (4.569%)	8,282,000 (3.650%)	7,399,000 (3.261%)
EQL (0.0005 mg/L)	not applicable	12,866,000 (5.670%)	11,884,000 (5.237%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that a revision to the MCL may provide a meaningful opportunity to improve the level of public health protection, EPA considered whether treatment feasibility is likely to pose any limitations if the MCL were lowered (USEPA, 2009g). The current BATs for trichloroethylene are packed tower aeration (PTA) and granular activated carbon (GAC). Small system compliance technologies for trichloroethylene include GAC and several aeration technologies. EPA's assessment shows that PTA and GAC are effective enough to achieve concentrations as low as the EQL.

EPA is not currently able to assess the potential health benefits from a revised MCL for trichloroethylene, because the revised health effects assessment is not yet available. However, based on its B2 cancer classification (MCLG of zero) and the occurrence and exposure analysis at possible MCL values, the Agency believes that a revision to the MCL may provide a meaningful opportunity to reduce public health risks.

c. *Review Result.* The Agency believes it is appropriate to revise the NPDWR for trichloroethylene although a health effects assessment is currently in progress. The existing MCLG is zero (based on the current B2 cancer classification) and the current MCL is based on a PQL (*i.e.,* analytical feasibility) of 0.005 mg/L. The Agency's review indicates that analytical feasibility could be as much as 10 times lower (~ 0.0005 mg/L) and occurrence at this level appears to be relatively widespread. Hence, revisions to the trichloroethylene NPDWR may provide a meaningful opportunity for health risk reduction. If the updated health effects assessment is completed in time to consider for the regulatory revision of trichloroethylene, the Agency will consider this assessment in its evaluation of public health benefits associated with any revision. As discussed in Section VII, the Agency solicits public comment and/or relevant information that may inform the regulatory revision for trichloroethylene. EPA is also requesting that stakeholders provide information/data about the lowest level of quantitation (including the analytical method used) that laboratories can reliably and consistently achieve.

69. Uranium

a. *Background.* EPA published the current NPDWR for uranium on December 7, 2000 (65 FR 76708 (USEPA, 2000c)). The NPDWR established an MCLG of zero based on a cancer classification of A, known human carcinogen. As noted in the December 2000 FR, uranium has also been identified as a nephrotoxic metal (kidney toxicant) and EPA derived a drinking water equivalent level of 20 µg/L as a noncancer health endpoint for kidney toxicity. The NPDWR also established an MCL of 30 µg/L, which is higher than the feasible level of 20 µg/L and the level associated with kidney toxicity. In December 2000, EPA exercised its discretionary authority to set an MCL at a level higher than feasible (SDWA Section 1412(b)(6)), based on the finding that "benefits do not justify the costs at the feasible level (20 µg/L) and that the net benefits are maximized at a level (30 µg/L) that is still protective of health with an adequate margin of safety" (65 FR 76708 (USEPA, 2000c)) [25].

b. *Technical Reviews.* EPA has initiated a reassessment of the health risks resulting from exposure to uranium. The revised health effects assessment will consider relevant studies on the toxicity of uranium, including its potential developmental and reproductive toxicity. The new health effects assessment was not completed by March 1, 2009, the review cutoff date for this notice (USEPA, 2009b). The IRIS Substance Assessment Tracking System Web site (*http://cfpub.epa.gov/iristrac/index.cfm*) has the most up-to-date information on the status of the health effects assessment.

c. *Review Result.* The Agency does not believe a revision to the NPDWR for uranium is appropriate at this time because a reassessment of the health risks resulting from exposure to

[25] After the December 7, 2000 final regulation, two trade associations and several municipal water systems challenged EPA's standard for uranium by claiming that the Agency did not use the best available science when finalizing the standard. In February of 2003, the DC Circuit Court of Appeals upheld EPA's regulation for uranium (as well as combined radiums, and beta particle and photon emitters).

uranium is ongoing (USEPA, 2009b). As noted previously, the uranium MCL is based on the SDWA cost benefit provision (Section 1412(b)(6)) and the health effects assessment is important for reviewing the benefits associated with the basis of the MCL.

70. Vinyl Chloride

a. *Background.* EPA published the current NPDWR for vinyl chloride on July 8, 1987 (52 FR 25690 (USEPA, 1987)). The NPDWR established an MCLG of zero based on a cancer classification of A, known human carcinogen. The NPDWR also established an MCL of 0.002 mg/L, based on analytical feasibility.

b. *Technical Reviews.* As part of the Six-Year Review process, EPA conducted a literature search for relevant data on the carcinogenicity of vinyl chloride as well as its potential developmental and reproductive toxicity. EPA has not identified any new information that indicates that it is appropriate to consider revisions to the cancer classification for vinyl chloride at this time (USEPA, 2009b). Because the MCLG remains at zero, the Agency believes that a further review of the health effects of vinyl chloride is not warranted at this time.

The current MCL for vinyl chloride is based on a PQL of 0.002 mg/L. For the Six-Year Review, the Agency considered whether changes in the analytical feasibility of vinyl chloride might lead to a lower MCL. EPA reviewed PE data from the first Six-Year Review cycle and then analyzed more recent PT data to determine if the PQL can be revised (*i.e.,* analytical feasibility). Passing rates for PE data available through late 1999 for vinyl chloride are generally in the 75 to 80 percent range near the current PQL of 0.002 mg/L, but there were no results for PE studies with true values below the current PQL. More recent PT data from late 1999 through 2004, supplied by a PT provider, also show greater than 80 percent passing rates for studies around the current PQL, including two studies with true values below the PQL. Despite the limited data below the PQL, most of the laboratory passing rates from PE and PT studies—including two with true concentrations below the PQL—exceeded the 75 percent criterion usually used to derive a PQL. Therefore, a lowering of the PQL for vinyl chloride might be possible (USEPA, 2009c).

EPA evaluated two alternative sources of information to determine whether an EQL below the current PQL could be estimated: laboratory MRLs in the Six-Year Review ICR dataset, and the MDLs for approved methods for the detection of vinyl chloride (Methods 502.2 and 524.2). While EPA prefers to use laboratory performance data to calculate the PQL, the MRL and MDL information can be valuable for this review to indicate whether it is possible to quantitate at levels below the current PQL. The Six-Year Review ICR dataset contains MRL values for 139,494 samples. More than 80 percent of these values are less than or equal the modal MRL: 105,410 (76 percent) equal the modal MRL of 0.0005 mg/L and an additional 25,723 (18 percent) are lower than 0.0005 mg/L. Therefore, EPA selected the modal MRL as the EQL (USEPA, 2009e). The MDLs of approved methods range from 0.00017 to 0.00018 mg/L. Applying a multiplier of 10 would give a possible PQL range from 0.0017 to 0.0018 mg/L, which is higher than the EQL, but below the current PQL (USEPA, 2009e).

Based on these varied and unrelated approaches/sources of information, EPA believes that there may be potential to lower the PQL for vinyl chloride. To determine whether any MCL revision is likely to provide a meaningful opportunity to improve public health protection, EPA evaluated the occurrence of vinyl chloride at the EQL of 0.0005 mg/L and an additional threshold of 0.001 mg/L (USEPA, 2009f). Table VI–30 shows the results of the occurrence and exposure analysis for the current MCL and these thresholds. The occurrence and exposure analysis shows that average concentrations exceed the current MCL for 8 to 11 of 50,411 systems (0.016 to 0.022 percent) serving fewer than 14,000 people (or 0.003 to 0.006 percent of 226 million people). Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates 25 MCL violations for vinyl chloride between 1998 and 2005 (USEPA, 2007g). Average concentrations at 32 to 49 of 50,411 systems (0.063 to 0.097 percent), serving 483,000 to 766,000 people (or 0.213 to 0.338 percent of 226 million people), exceed the EQL of 0.0005 mg/L.

TABLE VI–30—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING VINYL CHLORIDE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or feasibility-based threshold	Systems with mean concentrations that are greater than the regulatory or feasibility-based threshold (percentages based on 50,411 systems with vinyl chloride data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.002 mg/L)	11 (0.022%)	10 (0.020%)	8 (0.016%)
½ MCL (0.001 mg/L)	21 (0.042%)	18 (0.037%)	15 (0.030%)
EQL (0.0005 mg/L)	not applicable	49 (0.097%)	32 (0.063%)
Regulatory or feasibility-based threshold	Corresponding Population Served (Percentages based on 226,464,000 people served by the systems with vinyl chloride data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (0.002 mg/L)	14,000 (0.006%)	12,000 (0.005%)	6,000 (0.003%)
½ MCL (0.001 mg/L)	56,000 (0.025%)	23,000 (0.010%)	18,000 (0.008%)
EQL (0.0005 mg/L)	not applicable	766,000 (0.338%)	483,000 (0.213%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset. Results are not reported at the EQL of 0.0005 mg/L because this is the modal MRL and setting a majority of the results equal to this value results in an upwardly biased estimate of the number of systems with mean concentrations that exceed this value.

[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.

[3] Results are based on setting all nondetect results equal to zero.

Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of a possibly lower PQL (and therefore a possibly lower MCL), EPA does not believe a revision to the NPDWR for vinyl chloride is appropriate at this time. The occurrence and exposure analysis based on possible changes in analytical feasibility indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve public health protection. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

71. Xylenes (Total)

a. *Background.* EPA published the current NPDWR for total xylenes on January 30, 1991 (56 FR 3526 (USEPA, 1991c)). The NPDWR established an MCLG and an MCL of 10 mg/L. EPA based the MCLG on a reference dose of 2 mg/kg-day and a cancer classification of D, not classifiable as to human carcinogenicity.

b. *Technical Reviews.* In 2003, the Agency updated its health effects assessment of xylenes (USEPA, 2003d). The change in this assessment could lead to a change in the MCLG. This assessment considered relevant studies on the toxicity of xylenes including developmental and reproductive toxicity. The assessment revised the RfD from 2 mg/kg-day to 0.2 mg/kg-day and concluded that there is inadequate information to assess the carcinogenic potential of xylenes (USEPA, 2003d). Based on the new IRIS assessment and RfD of 0.2 mg/kg-day, and assuming a 70-kg adult body weight and 2 liters water intake per day, the DWEL could be 7 mg/L. An RSC of 20 percent results in a possible MCLG of 1 mg/L.

Analytical feasibility does not pose any limitations for the current MCL and would not be a limiting factor for the possible MCLG decrease under consideration. EPA evaluated the results of the occurrence and exposure analyses for total xylenes to determine whether a revised MCLG/MCL would be likely to result in a meaningful opportunity to improve the level of public health protection (USEPA, 2009f). Table VI–31 shows the results of the occurrence and exposure analysis for the current MCL and the possible MCLG set equal to 1 mg/L based on the new health effects information. The occurrence and exposure analysis shows that average concentrations do not exceed the current MCL for any system in the analysis. Note that these results are based on the subset of monitoring data provided in response to the Six-Year Review ICR and do not necessarily reflect MCL violations, which are based on annual average concentrations at entry points; SDWIS/FED indicates two MCL violations for xylene between 1998 and 2005 (USEPA, 2007g). The occurrence and exposure analysis shows that average concentrations do not exceed the possible MCLG based on new health effects information (1 mg/L).

TABLE VI–31—NUMBER AND PERCENT OF SYSTEMS WITH MEAN CONCENTRATIONS EXCEEDING XYLENE THRESHOLDS AND CORRESPONDING ESTIMATES OF POPULATION SERVED

Regulatory or health-based threshold	Systems with mean concentrations that are greater than the regulatory or health-based threshold (percentages based on 47,698 systems with xylene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (10 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (1 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Regulatory or health-based threshold	Corresponding population Served (percentages based on 218,072,000 people served by the systems with xylene data in the Six-Year Review ICR occurrence dataset)		
	Nondetect values = MRL [1]	Nondetect values = ½ MRL [2]	Nondetect values = 0 [3]
MCL (10 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)
Possible MCLG (1 mg/L)	0 (0.000%)	0 (0.000%)	0 (0.000%)

[1] Results are based on setting all nondetect results equal to MRL values in the Six-Year Review ICR dataset
[2] Results are based on setting all nondetect results equal to ½ MRL values in the Six-Year Review ICR dataset.
[3] Results are based on setting all nondetect results equal to zero.
Source: USEPA, 2009f.

Since the occurrence analysis indicates that any revision to the MCL is unlikely to provide a meaningful opportunity to improve the level of public health protection, it was not necessary to perform any additional reviews on treatment feasibility or economic considerations.

c. *Review Result.* Although there are new data that support consideration of whether to revise the MCLG/MCL for total xylenes, EPA does not believe a revision to the NPDWR for total xylenes is appropriate at this time. In making this decision, the Agency considered whether any possible revision to the NPDWR for total xylenes is likely to provide a meaningful opportunity for health risk reductions. Taking into consideration the low occurrence of this contaminant, EPA has decided that any revision to the NPDWR would be a low priority activity for the Agency, and, thus, is not appropriate to revise at this time because of:

- Competing workload priorities;
- The administrative costs associated with rulemaking; and
- The burden on States and the regulated community to implement any regulatory change that resulted.

VII. EPA's Request for Comments

A. Request for Comment and/or Information on the Candidates for Revision

EPA invites commenters to submit any new, relevant peer-reviewed data or information pertaining to the four

NPDWRs identified in today's action as candidates for revision (*i.e.,* acrylamide, epichlorohydrin, tetrechloroethylene and trichloroethylene). This information will inform EPA's evaluation as the Agency moves forward with the regulatory revisions for these four NPDWRs. Peer reviewed data are studies/analyses that have been reviewed by qualified individuals (or organizations) who are independent of those who performed the work, but who are collectively equivalent in technical expertise (*i.e.,* peers) to those who performed the original work. A peer review is an in-depth assessment of the assumptions, calculations, extrapolations, alternate interpretations, methodology, acceptance criteria, and conclusions pertaining to the specific major scientific and/or technical work products and of the documentation that supports them (USEPA, 2000d). Relevant data include studies/analyses pertaining to analytical feasibility, treatment feasibility, and occurrence/exposure related to the four NPDWRs candidates for revision listed in today's action.[26] Table VII–1 provides a list of the specific items for which EPA is requesting comment and/or information for the four candidates for revision. It also provides a cross-reference to the section addressing the issue.

TABLE VII–1—ITEMS FOR WHICH EPA IS REQUESTING COMMENT AND/OR INFORMATION FOR THE FOUR CANDIDATES FOR REVISION

Issue	Notice section
Any new, relevant peer-reviewed data or information that would inform the revision of the NPDWR for acrylamide, including information pertaining to extent of use of polyacrylamide in drinking water facilities.	Section VI.B.1.
Any new, relevant peer-reviewed data or information that would inform the revision of the NPDWR for epichlorohydrin, including information pertaining to extent of use of epichlorohydrin-based polymers/co-polymers in drinking water facilities.	Section VI.B.36.
Any new, relevant peer-reviewed data or information that would inform the revision of the NPDWR for tetrachloroethylene, including information/data about the lowest level of quantitation (and analytical method used) that laboratories can reliably and consistently achieve.	Section VI.B.60.
Any new, relevant peer-reviewed data or information that would inform the revision of the NPDWR for trichloroethylene, including information/data about the lowest level of quantitation (and the analytical method used) that laboratories can reliably and consistently achieve.	Sections VI.B.65.

B. Request for Information/Data on Other Review Topics

EPA also invites commenters to submit new, relevant information on several other review topics referenced in this notice and listed in Table VII–2.

TABLE VII–2—ISSUES FOR WHICH EPA IS REQUESTING PUBLIC INPUT AND/OR INFORMATION

Issue	Notice section
Location for nitrate and nitrite monitoring	Section V.B.6.
Monitoring frequency for ground water systems with low nitrate and nitrite concentrations	Section V.B.6.
Monitoring requirements for non-community water systems	Section V.B.6.
Detection limits that serve as triggers to determine compliance monitoring frequency for SOCs	Section V.B.6.
New, relevant health effects information that will help the Agency decide whether to initiate a new health effects assessment for chromium.	Section VI.B.17.
New, relevant health effects information that will help the Agency decide whether to initiate or nominate nitrate and nitrite for a new health effects assessment.	Sections VI.B.49 and VI.B.50.
New, relevant health effects information that will help the Agency decide whether to initiate or nominate selenium for a new health effects assessment.	Sections VI.B.56.
New, relevant health effects information that will help the Agency decide whether to initiate or nominate 1,2,4-trichlorobenzene for a new health effects assessment.	Sections VI.B.65.

C. Requests for Information on the Impacts of Climate Change on Water Quality

The Agency recognizes that changes in global climate can impacttemperature, rainfall patterns, and snow and ice cover. Changes in these climate indicators can impact water quantity and water quality. In an effort to assess the impacts of climate change on water quality, EPA is asking if public water systems and/or States have any information or data that illustrates the impact of climate change (*e.g.,* changes in rainfall, drought, temperature, and snow/ice cover) on the occurrence of contaminants in drinking water, both in source water and in finished water. EPA also requests data on changes in the variability of occurrence and impacts on drinking water treatment to address occurrence or variability changes.

VIII. EPA's Next Steps

EPA will consider the public comments and/or any new, relevant, peer-reviewed data submitted for the four NPDWRs listed as candidates for revision as the Agency proceeds with the regulatory revisions for these regulations. The announcement that the Agency intends to revise an NPDWR (pursuant to SDWA section 1412(b)(9)) is not a regulatory decision. Instead, it initiates a regulatory process that will involve more detailed analyses of health effects, analytical and treatment feasibility, occurrence, benefits, costs, and other regulatory matters relevant to deciding whether an NPDWR should be revised. The Six-Year Review results do not obligate the Agency to revise an NPDWR in the event that EPA determines during the regulatory process that revisions are no longer

[26] Note that new health effects studies/information for acrylamide, PCE and TCE are being considered as part of the IRIS update to these health assessments.

appropriate and discontinues further efforts to revise an NPDWR. Similarly, the fact that an NPDWR has not been selected for revision means only that EPA believes that regulatory changes to a particular NPDWR are not appropriate at this time for the reasons given in today's action; future reviews may identify information that leads to an initiation of the revision process.

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Lisa P. Jackson,

Administrator.

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Part III

National Credit Union Administration

12 CFR Parts 701, 708a, and 708b
Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit Unions; Proposed Rules

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 701, 708a, and 708b

Fiduciary Duties at Federal Credit Unions; Mergers and Conversions of Insured Credit Unions

AGENCY: National Credit Union Administration.

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Credit Union Administration (NCUA) is issuing a proposed rulemaking covering several related subjects. The proposal documents and clarifies the fiduciary duties and responsibilities of Federal credit union directors. The proposal adds new provisions establishing the procedures for insured credit unions merging into banks. The proposal also amends some of the existing regulatory procedures applicable to insured credit union mergers with other credit unions and conversions to banks.

DATES: Comments must be received on or before May 28, 2010.

ADDRESSES: You may submit comments by any of the following methods (Please send comments by one method only):

- *NCUA Web site: http://www.ncua.gov/news/proposed_regs/proposed_regs.html.* Follow the instructions for submitting comments.
- *E-mail:* Address to *regcomments@ncua.gov.* Include "[Your name] Comments on Advance Notice of Proposed Rulemaking (Specialized Lending Activities)" in the e-mail subject line.
- *Fax:* (703) 518–6319. Use the subject line described above for e-mail.
- *Mail:* Address to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.
- *Hand Delivery/Courier:* Same as mail address.

FOR FURTHER INFORMATION CONTACT: Paul Peterson, Director, Applications Section, Office of General Counsel; Elizabeth Wirick, Staff Attorney, Office of General Counsel; or Jacqueline Lussier, Staff Attorney, Office of General Counsel, at the above address or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

In January 2008, the NCUA Board issued an Advance Notice of Proposed Rulemaking and Request for Comment (ANPR), asking whether it should adopt rules governing the merger of a federally insured credit union (FICU) into, or a FICU's conversion to, a financial institution other than a mutual savings bank (MSB). The ANPR also sought comments about whether NCUA should amend its existing regulations regarding mergers, charter conversions, and changes in account insurance. 73 FR 5461 (Jan. 30, 2008). In particular, NCUA sought comments about how these transactions affect member rights and ownership interests, and whether regulatory changes are necessary to better protect member interests.

A particular focus of the ANPR was whether existing rules adequately protect member interests. Interestingly, all of the comments from individual credit union members and credit union attorneys stated that NCUA's current rules relating to conversions and mergers are inadequate.[1] Some of these commenters expressed concern that the fundamental changes brought about by the conversion and merger transactions referenced in the ANPR remove value from a credit union or transfer the value of some owners' interests to others, and so these transactions should be further regulated to protect all credit union member-owners. Accordingly, NCUA is now proposing rules designed to better protect the members.

This proposed rulemaking has four parts. First, a new § 701.4 addresses the duties of Federal credit union directors in managing the affairs of their credit unions. Second, revisions to part 708a address issues related to credit union conversions to mutual savings banks. Third, a new subpart to part 708a sets forth the procedures for merging a credit union into a bank. Finally, revisions to the existing provisions of part 708b address issues related to credit union mergers with other credit unions and the termination of Federal deposit insurance.

The proposed new § 701.4 provides that management of each FCU is vested in its board of directors who may delegate authority to carry out functions but not responsibility for the execution of such functions. Among other things, the proposal specifies the directors' duties of loyalty and care, requires that directors understand how to evaluate the credit union's financials, and instructs directors on when they may properly rely on the information and advice of third parties when making decisions. The proposal also amends § 701.33, and NCUA's standard FCU bylaws, to limit the indemnification of FCU directors for liability arising from improper decisions that affect the fundament rights and interests of the credit union's members. The proposal makes a corresponding change to the standard Federal corporate credit union bylaws.

The proposal revises the existing provisions of part 708a on the direct conversion of a credit union to a bank. The revisions are intended to better protect the secrecy and integrity of the voting process, to require converting credit unions provide members with additional information about how the conversion process could affect them, and to require these credit unions to provide NCUA copies of correspondence with other agencies related to the conversion.

The proposal also adds a new subpart to 708a that establishes procedural and substantive requirements for converting a credit union to a bank through a merger. The procedures are, generally, an amalgamation of the existing procedures for merging a credit union into another credit union and the procedures for converting a credit union into a mutual savings bank. The proposal also requires that the credit union determine the value of the transaction to the gaining bank and compensate the members of the merging credit union for the diminution of their ownership rights that results from the merger.

The proposal also provides for several amendments to the existing provisions of part 708b relating to credit union-to-credit union mergers and share insurance conversions. The proposed revisions include provisions that protect the secrecy and integrity of the voting process, that require disclosure to the members of information on any material increases in management compensation connected with the merger, that place time limits on completion of share insurance conversions, and that require disclosures related to share adjustments. The proposal also includes other technical amendments to part 708b.

B. Proposed Rule: § 701.4 General Authorities and Duties of Federal Credit Union Boards of Directors

Proposed § 701.4 establishes the fiduciary duties and responsibilities of Federal credit union directors. A discussion of the basis for this rule, followed by a detailed paragraph-by-paragraph discussion, follows.

The directors of a credit union have a fiduciary duty to act in the best

[1] Several other commenters, including comments from some credit unions, generally opposed any rule changes related to any of the subjects in the ANPR. These commenters argued that prior revisions to the merger regulation as well as the member access to records rule provide adequate regulation of merger and conversion transactions. Some of these commenters also stated that credit unions have sufficient regulation in general and do not need further regulatory burden at this time. A few commenters asserted NCUA lacks authority to further regulate these transactions.

interests of the credit union members. As discussed in the ANPR, the Federal Credit Union Act (Act) has numerous references to the duty to act in the best interests of the credit union's members, including:

- The NCUA Board may act to remove or prohibit any institution-affiliated party, including a director, of a federally-insured credit union, if the institution-affiliated party has "committed or engaged in any act, omission, or practice, which constitutes a breach of such party's fiduciary duty * * * [and by reason of such action] * * * the interests of the insured credit union's members have been or could be damaged." 12 U.S.C. 1786(g)(1)(B).
- Credit unions applying for Federal account insurance must agree to maintain such special reserves as the NCUA Board may require "for protecting the interests of the members." 12 U.S.C. 1781(b)(6).
- The NCUA Board must review the application of any individual to become a director or senior manager at a newly chartered or troubled federally-insured credit union, and disapprove that application, if acceptance of the applicant would not be in the best interests of the depositors [members]. 12 U.S.C. 1790a.
- When acting as the conservator or liquidating agent of a federally-insured credit union, the NCUA Board may take any action it determines is in the best interests of the credit union's account holders [members]. 12 U.S.C. 1787(b)(2)(J)(2).
- A voluntary liquidation of a Federal credit union must be in the best interests of the members. 12 U.S.C. 1766(b)(2).[2]

Although referring specifically to the NCUA Board, these provisions support the conclusion that credit union directors have a fiduciary obligation to credit union members. As previously stated by the NCUA Board:

> A closer look at how the cited provisions function, however, connects them to the [credit union's board of] directors. Specifically, the best interests of the members will dictate the [NCUA] Board's actions when removing or prohibiting a director, approving the appointment of a director, operating a conserved credit union in the role of the board of directors, and reviewing the propriety of a board of directors' decision to pursue a voluntary liquidation. If the best interests of the members standard guides the conduct of the [NCUA] Board, it must also guide the conduct of the [credit union's board] of directors.

71 FR 77150, 77155 (Dec. 22, 2006) (preamble to NCUA's final rule on conversions of federally-insured credit unions to mutual savings banks).

A Federal credit union's board of directors must understand its fiduciary duty to act in the best interests of the members. This understanding is particularly important when the board is considering a proposal to change the credit union's charter or insurance status. These extraordinary transactions may have a significant impact on the members' financial interests, and may also present conflicts between member interests and the personal financial interests of credit union officials and management.

While the existence of fiduciary duties owed by directors to members is clear, neither the Act nor NCUA regulations provide specificity as to fiduciary duties and standards. Currently, an FCU's board must look to state statutory and case law to determine the scope of its fiduciary duties to members and the standard of care required as articulated by its state of location.[3] Statutory law and case law vary from jurisdiction to jurisdiction causing confusion for FCUs and a lack of uniformity between FCUs in different states.

In fact, NCUA is particularly concerned about assertions that the members of a credit union do not own the credit union, or that the duties of the directors do not flow to the members but, rather, flow in some amorphous way only to the institution. NCUA has observed this view both among some Federal credit union directors and in one state court decision.[4] A lack of focus on the interests of the members makes it easier for officials and management to make decisions that benefit themselves personally, even if those decisions are not necessarily in the best interests of the membership as a whole. Accordingly, NCUA wants to make clear that directors at a federally chartered credit union must consider the interests of the membership, and put those interests first, when making decisions that affect the credit union.[5]

Considering the unique interests, concerns, and structure of credit unions as financial cooperatives, NCUA believes having a uniform regulatory standard of care for FCUs may be useful to eliminate confusion and may make it easier for FCU boards to fulfill their duties to members. Accordingly, NCUA is now proposing a regulatory standard of care for directors that will help ensure they meet their fiduciary duties to their members, both in general and also when making decisions that affect the fundamental interests of members.

The proposal provides that management of each FCU is vested in its board of directors who can delegate operational function but not the responsibility for operations. The proposal further provides that an FCU director must:

- Carry out his or her duties in good faith, in a manner reasonably believed to be in the best interests of the membership of the Federal credit union, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;
- Administer the affairs of the Federal credit union fairly and impartially and without discrimination in favor of or against any particular member;
- Understand the Federal credit union's balance sheet and income statement and, ask, as appropriate, substantive questions of management and the internal and external auditors; and
- Direct the operations of the Federal credit union in conformity with the requirements set forth in the Federal Credit Union Act (Act), the NCUA's regulations, other applicable law and sound business practices.

The proposal also discusses the authority and limits of the board's

[2] 73 FR 5461, 5463 (Jan 30, 2008). In addition, NCUA's rule on conversions of insured credit unions to mutual savings banks requires that as part of the credit union's notice to NCUA of its intent to convert to an MSB, the credit union's board of directors must provide a certification of the board of directors' support for the conversion, which must state that each director signing the certification believes the proposed conversion is in the best interests of the credit union's members. 12 CFR 708a.5(a)(2).

[3] Duties of directors of for-profit corporations have been codified in many states, although fewer states have codified the duties of directors of credit unions. Some state credit union statutes incorporate the law applicable to the directors of for-profit corporations. In *Gully* v. *Nat'l Credit Union Admin. Brd.,* 341 F.3d 155 (2d Cir. 2003), an appeal from an NCUA prohibition order finding that the manager of a Federal credit union engaged in unsafe and unsound practices and that she breached her fiduciary duty as the manager of the credit union, the court applied New York law. "The parties agree that New York law applies to [the] claim of breach of fiduciary duty and that the [Federal credit union] is considered a corporation for purposes of New York fiduciary law." *Id.* at 165. The court concluded that New York's fiduciary law was consistent with the standard used by the NCUA Board in its decision. *Id.*

[4] *See, e.g., Save Columbia CU Committee* v. *Columbia Community Credit Union,* 139 P. 3d 386, 393, 394 (Wash. Ct. App. 2006). The court stated, in dicta, that under Washington state law the directors of a state chartered credit union owed no fiduciary duties to the members of the credit union. Although the credit union was federally insured, the state court did not discuss the applicable provisions of the Federal Credit Union Act.

[5] Of course, in the normal course of business when a board acts in the best interests of the credit union it is usually also furthering the interests of the members. But the duty to act in the best interests of members is primary, and, if there is any theoretical divergence or conflict between the interests of the institution and the interests of the members, the latter takes precedence. For example, when a credit union proposes a voluntary liquidation, the interests of the credit union as an institution, and the interests of the members, may diverge. The Act provides, however, that the decision to undertake a voluntary liquidation is determined by the best interests of the members and not the best interests of the institution. 12 U.S.C. 1766(b)(2).

ability to rely on information provided by others. A director is generally entitled to rely on information prepared or presented by employees of the Federal credit union or consultants whom the director reasonably believes to be reliable and competent in the functions performed.

The proposal also amends the indemnification provisions of NCUA's rules to prohibit a Federal credit union from indemnifying officials and employees for liability from misconduct that is grossly negligent, reckless, or willful in connection with a decision that affects the fundamental rights of members. NCUA is also proposing a change to NCUA's standard bylaw on indemnification to conform that bylaw with the proposed change to the rule on indemnification. The proposal makes a corresponding change to the standard Federal corporate credit union bylaw on indemnification.

The proposed rule applies to Federal credit unions only, and not to state chartered federally-insured credit unions. The proposed rule applies generally to all of the actions of a Federal credit union board of directors, but imposes a higher standard of care for actions by the board that affect members' ownership interests in Federal credit unions and other fundamental rights. The proposed rule is modeled in part on an existing rule on the powers and responsibilities of the boards of directors of the Federal Home Loan Banks promulgated by the Federal Housing Finance Board in 2000.[6] The proposal is also based in part on Model Business Corporation Act § 8.30, which defines the general standards of conduct for directors of for-profit corporations.

A paragraph-by-paragraph discussion of the rule follows.

Sec. 701.4(a) Management of a Federal credit union.

Proposed paragraph (a) states, "The management of each Federal credit union is vested in its board of directors. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's management is non-delegable."

The first sentence restates section 113 of the FCUA, 12 U.S.C. 1761b, which provides that the board of directors shall have the general direction and control of the affairs of the Federal credit union.[7] The board of directors must oversee the credit union's operations to ensure the credit union operates in a safe and sound manner. For example, the board must be kept informed about the credit union's operating environment, hire and retain competent management, and ensure that the credit union has the risk management structure and process suitable for the credit union's size and activities. The second sentence of proposed § 701.4(a) makes clear that a credit union's board of directors may delegate responsibility for day-to-day operations to credit union management officials, but that, in so doing, may not and cannot delegate its ultimate statutory responsibility for the management of the credit union.

Sec. 701.4(b) Duties of Federal credit union directors.

Proposed paragraph (b) sets forth the fiduciary duties of Federal credit union directors. Paragraph (b)(1) charges a director to:

> Carry out his or her duties as a director in good faith, in a manner such director reasonably believes to be in the best interests of the membership of the Federal credit union, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances * * *.

This standard is the most common fiduciary duty standard applicable to corporations under state law, and the language of (b)(1) mirrors the current standard applicable to FHLBs. 12 CFR 917.2(b)(1). This standard is crucial in defining a director's obligations to its members, and is the standard by which the members and NCUA will measure the actions of FCU directors.

Embedded in this standard is both a duty of loyalty and a duty of care. The duty of loyalty is set forth in the words "[e]ach Federal credit union director has the duty to * * * carry out his or her duties as a director in good faith, in a manner such director reasonably believes to be in the best interests of the membership of the Federal credit union * * *." Directors owe a duty to act in the best interests of the membership of the credit union and not in the director's personal interests. When carrying out his or her responsibilities, a director must always seek to advance what the director reasonably believes to be in the members' best interests, and must place the members' well-being above his or her own personal interests or those of third parties.

The obligation to act in good faith means honesty in purpose, making sure not to disregard the director's responsibilities or to act in a way that violates the law. Good faith also requires that all material facts known to a director be disclosed to other directors and also to the members where the members are charged with voting on a particular issue.

The Federal credit union standard bylaws contain a provision on conflicts of interest. Article XVI., Section 4. A director who has a conflict of interest is disqualified from board deliberations upon or the voting on any question affecting his or her pecuniary or personal interest or the pecuniary interest of other entities in which he or she is interested, directly or indirectly. While the duty of loyalty goes beyond the terms of this provision or other specific conflicts of interest provisions, a director who violates this provision is also in violation of the duty of loyalty.

Section 701.4(b)(1) also establishes a duty of care with the words "[e]ach * * * director * * * must carry out his or her duties * * * with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances * * *. " Compliance with the duty of care is measured by the "prudent person," or "reasonable person" standard—what would such a prudent person have done under similar circumstances? This standard is consistent with the historic standards imposed on directors of national banks.[8]

[6] 12 CFR 917.2. *See* 65 FR 25267 (May 1, 2000) and 65 FR 81 (Jan. 3, 2000). The Federal Housing Finance Agency (FHFA) succeeded the Federal Housing Finance Board (FHFB). Housing and Economic Recovery Act of 2008, Pub. L. 110–289, 122 Stat. 2654 (enacted July 30, 2008). The entities the FHFB regulated, the Federal Home Loan Banks (now regulated by the FHFA), continue to operate under regulations promulgated by the FHFB until such regulations are superseded by regulations promulgated by the FHFA. *See* 74 FR 30975 (June 29, 2009).

[7] *See also* § 111 of the FCUA, 12 U.S.C. 1761, which states that the management of a Federal credit union shall be by a board of directors, a supervisory committee, and where the bylaws so provide, a credit committee. This and other sections of the FCUA delineate the role and responsibilities of the board of directors, the supervisory committee and the credit committee, but do not articulate a general standard of fiduciary conduct for directors or members of any committee on which a director may serve.

[8] In 1891, in the absence of an applicable Federal statute or regulation, the Supreme Court considered the standard of care that should be applied to the officers and directors of a national bank. *See Briggs* v. *Spaulding,* 141 U.S. 132 (1891). In *Briggs,* a receiver for a national bank sought to hold several officers and directors liable for losses incurred by the bank on risky loans and general mismanagement of the bank. The receiver alleged that the directors failed to keep accurate books, have regular meetings, and oversee the actions of the bank's president. *Id.* at 137. They were accused of "passive negligence," the failure to act when a duty existed, but not of "positive misfeasance." *Id.* at 151. The Supreme Court held that "directors must exercise ordinary care and prudence in the administration of the affairs of the bank, and that this includes something more than officiating as

As suggested by the language, the duty of care includes a duty of inquiry that requires that directors inform themselves of "all material information reasonably available to them" prior to rendering a decision.[9] These duties of care and loyalty are amplified and reinforced by the remainder of proposed paragraph (b) and the provisions in proposed § 701.4(c) and (d), as discussed further below.

Proposed paragraph (b)(2) requires that directors administer the affairs of the credit union fairly and impartially so as not to favor the interests of any particular member or group of members. The director's obligation is to the membership as a whole, not to particular individuals or groups. So, for example, when the credit union makes determinations about extending credit to a particular member, the credit union has no fiduciary obligation to that particular member vis-a-vis that credit transaction but, rather, must make its decision on the credit transaction with regard only to the effects of the proposed transaction on the interests of the membership as a whole.

Proposed paragraph (b)(3) requires that each board director be financially literate. The directors must have a working familiarity with basic finance and accounting practices, (including the ability to understand the credit union's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors) or become financially literate within a reasonable time, not to exceed three months, after his or her election or appointment to the board of directors. This financial literacy may be obtained through training provided by the credit union, outside sources, or, for small credit unions, NCUA's Office of Small Credit Union Initiatives, if a director does not possess such financial literacy at the time of his or her election or appointment to the board.

Proposed paragraph (b)(4) charges each director with the general duty to direct the operations of the Federal credit union in conformity with the requirements of the FCUA, NCUA regulations, other applicable law, and sound business practices.

Sec. 701.4(c) Authority regarding staff and outside consultants.

Proposed paragraph (c) provides that:

- In carrying out its duties and responsibilities, each Federal credit union's board of directors and all its committees have authority to retain staff and outside counsel, independent accountants, financial advisors, and other outside consultants at the expense of the Federal credit union.
- Federal credit union staff providing services to the board of directors or any committee of the board under paragraph (c)(1) of this section may be required by the board of directors or such committee to report directly to the board or such committee, as appropriate.
- In discharging board or committee duties a director, who does not have knowledge that makes reliance unwarranted, is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in paragraph (d).

The board is the primary corporate decision-making body. The board in turn typically delegates significant authority for the day-to-day operations to senior management. To the extent that a board delegates to management, it must exercise reasonable oversight and supervision over management. Accordingly, proposed paragraph (c)(1) empowers the board of directors, and committees of the board, to hire staff (employees) and outside consultants, as necessary to carry out the board's duties and responsibilities.

Under proposed paragraph (c)(3), a director may generally rely on information, opinions, reports, or statements, including financial statements and other financial information, prepared by those to whom authority has been delegated. Still, as required by the duty of care, any reliance on the advice of others or information provided by others must be warranted under the circumstances. Limits on such reliance are discussed further in paragraph (d).

Sec. 701.4(d) Reliance.

Proposed paragraph (d) provides that a director may rely on:

- One or more officers or employees of the Federal credit union who the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided;
- Legal counsel, independent public accountants, or other persons retained by the Federal credit union as to matters involving skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence, and (ii) as to which the particular person merits confidence; and
- A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

Generally, a director must comply with the standard of care in making a judgment as to the reliability and competence of the source of information upon which the director proposes to rely or that it otherwise merits confidence. The director must also have read the information, opinion, report, or statement in question, or have been present at a meeting at which it was orally presented, or have taken other steps to become generally familiar with it.

Care in delegation and supervision includes evaluation of the capabilities and diligence of the person receiving the delegation in light of the subject and its relative importance, and paragraph (d) provides specificity as to when a director may rely on certain persons or groups.

Proposed paragraph (d)(1) permits a director to rely on one or more officers or employees of the Federal credit union who the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports, or statements provided. In determining whether an office or employee is reliable, the director would typically consider the individual's record for honesty, care, and ability in carrying out responsibilities which he or she undertakes. In determining whether an individual is competent, the director would normally consider the individual's background, education, experience and scope of responsibility within the credit union, the individual's familiarity and knowledge with respect to the subject matter, and the individual's technical skill.

Proposed paragraph (d)(2) permits reliance on legal counsel, independent public accountants, or other persons retained by the Federal credit union, but only as to matters involving skills or expertise the director reasonably believes are matters (i) within the particular person's professional or expert competence, and (ii) as to which

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figure-heads." *Id.* at 165. The Court stated that the standard of care for bank directors was "that which ordinarily prudent and diligent men would exercise under similar circumstances." *Id.* at 152.

[9] *See, e.g., Smith* v. *Van Gorkom,* 488 A.2d 858, 872 (Del. 1985). This case discusses various factors for determining whether a board of directors satisfied the standard of care when rendering an important decision, including:

- The amount of time directors spent researching the transaction, preparing for the decision and investigating the information and proposals;
- The amount of time spent in the meeting in which deliberation on the transaction took place;
- The source of any important numbers and dollar amounts, and whether they were based on credible information or were arbitrary;
- Whether the proposal and subsequent deliberations were thoroughly debated by the directors;
- Whether the directors had prior notice of what would be discussed before the meeting in which they deliberated and voted;
- Whether the directors were presented with or sought out outside information, such as an opinion of counsel or a fairness opinion; and
- Whether the board fully considered other alternatives to the transaction under consideration.

the particular person merits confidence. A determination of competence involves an examination of factors similar to those discussed in connection with determining competence under paragraph (d)(1). Likewise, a determination that the potential advisor merits confidence includes an examination of both competence and reliability, including whether the individual may be subject to conflicts of interests or may have a vested interest in the outcome of any transaction under advisement. This paragraph covers not only lawyers and accountants, but also other potential external advisers with special experience and skills, such as investment bankers and management consultants.

Proposed paragraph (d)(3) permits reliance on a committee of the board if, again, the director reasonably believes the committee merits confidence. This paragraph applies when the committee is submitting recommendations for action by the full board of directors as well as when it is performing supervisory or other functions not requiring immediate board action.

The Board also notes that there are several sources of guidance on the fiduciary duties of directors of depository institutions. These sources include the Federal Credit Union Handbook; Office of Comptroller of the Currency (OCC), The Director's Book (1997) and Corporate Governance and the Community Bank: A Regulatory Perspective (2005), both available on the OCC's Web site: *http://www.occ.treas.gov;* and American Bar Association Committee on Corporate Laws, Corporate Director's Guidebook, 5th ed., 62 *Business Lawyer* 1482 (August 2007) (available on Lexis). FCU directors may follow this guidance to the extent that it does not conflict with the provisions of the proposed rule or any future guidance NCUA may put out in this area.

Proposed amendment to § 701.33.

Section 701.33 of the NCUA regulations is NCUA's indemnification regulation. 12 CFR 701.33. Section 701.33(c)(1) states that a Federal credit union may provide indemnification for its officials and employees. Section 701.33(c)(2) states that FCU indemnification shall be consistent either with the standards applicable to credit unions generally in the state in which the principal or home office of the FCU is located, or with the relevant provisions of the Model Business Corporation Act (MBCA). An FCU that elects to provide indemnification must specify whether it will follow state law or the MBCA. It also states that indemnification and the method of indemnification may be provided for by charter or bylaw amendment, contract, or board resolution, consistent with the procedural requirements of the applicable state law or the MBCA, as specified.[10] Section 701.33(c)(3) also permits a Federal credit union to purchase and maintain insurance on behalf of its officials and employees against any liability asserted against them and expenses incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by applicable state law or the MBCA. 12 CFR 701.33(c)(4).

The preamble to the final rule on indemnification indicated that indemnification is not to be automatically provided in every case. "[T]he power to provide for indemnification does not relieve [a Federal credit union] of its responsibility to determine whether indemnification is appropriate under the circumstances. NCUA will monitor indemnification provisions for consistency with the indemnification standards chosen, for the safety and soundness implications for the institution, and for their application in a given case." 53 FR 29640, 29641 (Aug. 8, 1988).

The NCUA Board desires to ensure that FCU officials and employees are held personally accountable, where appropriate, for violations of their fiduciary duties. Accordingly, NCUA will not permit a Federal credit union to indemnify officials and employees against liability based on an aggravated breach of the duty of care when such a breach may affect fundamental member rights and financial interests. Accordingly, NCUA proposes to amend § 701.33 by adding a new paragraph (c)(5) to read as follows:

> Notwithstanding paragraphs (c)(1) through (3) of this section, a Federal credit union may not indemnify an official or employee for personal liability related to any decision made by that individual on a matter significantly affecting the fundamental rights and interests of the FCU's members where the decision giving rise to the claim for indemnification is determined by a court to have constituted gross negligence, recklessness, or willful misconduct. Matters affecting the fundamental rights and interests of FCU members include charter and share insurance conversions and terminations.

Consistent with the proposed § 701.4, matters affecting the fundamental rights and interests of Federal credit union members are defined to include charter conversions and share insurance conversions and terminations.

The Board believes that, where directors and other officials and employees are charged with making decisions relating to the fundamental rights and interests of the members, a gross negligence standard for denying indemnification is appropriate. Gross negligence is a legal term of art, generally defined as a "conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party * * *." *Black's Law Dictionary* 8th ed. (Thomson West 2004). Gross negligence is a more lenient standard than simple negligence, and indemnification will still be permitted under the proposal for liability premised on simple negligence.

One section of the FCU Act references the level of disregard by an official or employee of the duty of care. Section 207(h) of the FCU Act states that:

> A director or officer of an insured credit union may be held personally liable for monetary damages in any civil action, by * * * the [NCUA] Board, which action is prosecuted wholly or partially for the benefit of the Board * * * acting as conservator or liquidating agent of such insured credit union * * * for gross negligence, including any similar conduct or conduct that demonstrates a greater disregard of a duty of care (than gross negligence) including intentional tortious conduct, as such terms are defined and determined under applicable State law. Nothing in this paragraph shall impair or affect any right, if any, of the Board under other applicable law.

12 U.S.C. 1787(h)(3). Section 207(h) applies only to actions taken by the Board, and only as conservator or liquidating agent, while the proposed indemnification provision applies to liability, whether to the Board or other parties. In the Board's view, the proposed limits on indemnification at FCUs are consistent with § 207(h) and the associated case law.[11]

NCUA also proposes to make a conforming change to the FCU Standard Bylaws. Article XVI, § 8 sets forth the requirements for director

[10] *Id.* The NCUA must approve any such charter or bylaw amendment.

[11] *See Atherton* v. *FDIC,* 519 U.S. 213 (1997) (holding that 12 U.S.C. 1821(k), a Federal statute addressing the standard of care owed by bank directors and officers under the Federal Deposit Insurance Act, provides for a gross negligence standard as the minimum level of disregard of the standard of care, but does not preempt state statutes that set a stricter level of disregard, such as simple negligence). The Court was reviewing the Federal Deposit Insurance Act's analog to § 207(h) of the FCU Act. While this proposed rulemaking establishes fiduciary standards for FCU directors and limits indemnification for officials and employees, this rulemaking does not address causes of action based on those standards, nor does the rulemaking address the requisite level of disregard for a finding of liability based on any particular cause of action.

indemnification. The proposed change to Article XVI will limit indemnification in a manner parallel to paragraph (c)(5) of § 701.33. The proposal makes a corresponding change to the standard Federal corporate credit union bylaws.

C. Proposed Reorganization of Parts 708a and 708b

Currently, part 708a of NCUA's rules covers the conversion of insured credit unions into MSBs, and part 708b covers the merger of insured credit unions with other credit unions and the conversion and termination of Federal share insurance. This proposed rulemaking, if adopted, would result in a reorganization of part 708a.

Part 708a currently has no subparts, and the revisions to part 708a create three new subparts. The revision moves the current part 708a treatment of MSB conversions into subpart A. The new rule regarding the mergers of insured credit unions into banks would be located in subpart C. Subpart B would be reserved for a potential future rulemaking on the conversion of insured credit unions into stock banks.

The proposal does not affect the organization of part 708b, which currently consists of three subparts. The title of part 708b, however, would change slightly. The current title of part 708b, "Mergers of Federally-insured Credit Unions; Voluntary Termination Or Conversion of Insured Status," would change to read "Mergers of Federally-insured Credit Unions with Other Credit Unions; Voluntary Termination Or Conversion of Insured Status." With the addition of a new rule in part 708a on the merger of credit unions into banks, this change to the title of 708b is necessary to clarify the limited scope of part 708b.

D. Proposed Amendments to Part 708a, Subpart A: Conversion of Insured Credit Unions to Mutual Savings Banks

The proposed revisions to newly designated Subpart A of Part 708a (sections 708a.101 to 708a.113, as redesignated) protect the integrity of the voting process during conversions to a mutual savings bank, provide members with additional information about how the conversion process could affect them, and require converting credit unions to provide copies of correspondence with other agencies related to the conversion. The proposed changes are as follows:

Sec. 708a.101 Definitions.

The proposal adds definitions for the terms "conducted by an independent entity" and "secret ballot." These new definitions clarify Part 708a's requirements for balloting in credit union conversions. Section 708a.106 (formerly § 708a.6) requires elections to be by secret ballot and conducted by an independent entity. Along with the new definitions for "conducted by an independent entity" and "secret ballot," the proposed amendments move the definition of "independent entity" from § 708a.106 to the definitions section, § 708a.101.

The proposal also adds a new definition of the phrase "conducted by an independent entity" to prevent credit union staff and officials from accessing interim vote tallies during the election and also to ensure that members learn the results of the membership vote. NCUA has concerns that the use of interim vote tallies by credit union management may unfairly skew the results of elections in favor of the result management prefers.

NCUA has observed in some FICU to MSB conversions that credit union management seeks periodic running tallies from the election teller as to how many members have voted yes and no and which members have not voted. Management has justified this practice by stating they only use the information for the purpose of encouraging members to vote. In investigations of conversions, however, NCUA has discovered that some credit unions use this interim vote information for soliciting only voters likely to vote in favor of the conversion. In addition, some converting credit unions have pressured or required employees to encourage members, including family, to vote in favor of conversion even where the employees did not wish to do so or did not believe conversion was in the members' best interests. Other problematic tactics include determining how a member voted in violation of the voting secrecy requirement, using periodic voting tallies to management's advantage and to the disadvantage of those members opposed to the conversion by not sharing that information with members during the voting period, and improperly handling ballots for members instead of having members mail them directly to the independent election teller. *See* the ANPR discussion at 73 FR 5461, 5466 (Jan. 30, 2008).

Since issuing the ANPR, NCUA also encountered a situation where management halted the vote on conversion shortly before the conclusion of the voting period and then declined to announce the interim results to the member-owners, and NCUA later learned that management stopped the vote because the running vote tallies management was receiving from the election teller were nearly two-to-one in opposition to the conversion. In another situation, after a conversion vote was completed, management refused to disclose the results of the vote, in terms of the votes for and against the conversion, to its member-owners and failed to include these numbers in its certification to NCUA.

Accordingly, the proposal adds a definition of "conducted by an independent entity" that carries the following:

- The independent entity will receive the ballots directly from voting members and store them.
- After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting. The independent entity will certify the final vote tally in writing to the credit union and to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit union prior to certifying the final vote tally.

This proposed definition of "conducted by an independent entity" prohibits interim vote tallies and ensures that member-owners and NCUA are properly informed of the results of any conversion vote. Some ANPR commenters opposed to a ban on the use of interim vote tallies expressed concern that without access to voting results, a converting credit union would be unable to determine which members had voted and so determine how to efficiently target their outreach efforts to ensure that all voters had an opportunity to vote. To address this concern, the proposal does not prohibit management from obtaining lists of members who have not voted at any point during the election process, but only prevents management access to running vote tallies.

The proposal adds a definition of "secret ballot" to mean "no credit union employee or official can determine how a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots."

This proposal will ensure that employees and officials do not improperly influence members' votes, even inadvertently. Some ANPR commenters opposed to a ban on employees handling ballots expressed concerns that the ban would make it less convenient for members to vote, but the proposed rule need not have this

effect, as nothing prohibits the independent teller from placing a secure ballot box at credit union branch locations for use by members who bring their completed ballots to the credit union. Also, nothing prohibits employees from distributing blank ballots to those members who may have misplaced their original ballot.

Some commenters opposed to prohibitions on management obtaining interim voting tallies and employees handling ballots stated it would be unfair to impose these rules in the context of conversions to a mutual savings bank and not also for credit union to credit union mergers or insurance conversions. NCUA agrees and as discussed under § 708b, has added identical definitions and restrictions for elections involving other types of transactions as well.

The proposal also moves the current definition of "independent entity" into the definitions section but does not revise the substance.

Sec. 708a.104 Disclosures and communications to members.

Paragraph (c) of this section lists the information that credit unions seeking to convert must disclose to members. The proposal adds required disclosures about the estimated costs of conversion; the conversion's affect on the availability of facilities, including branches and ATMs; and the fact that NCUA neither approves nor disapproves of the proposed conversion. The addition of these disclosures results in the addition of three new subparagraphs to paragraph (c) and the renumbering of the other five existing subparagraphs of paragraph (c).

One ANPR commenter suggested information about conversion-related expenses would be useful to members, and the Board agrees. Conversion costs are paid from a credit union's earnings, and accumulated earnings are capital and represent members' ownership interests, so members have a right to know how these ownership interests will be affected by consideration of the board of directors' conversion proposal. The Board adds a new required disclosure about the costs of the conversion in subparagraph (5) of paragraph (c). The credit union must disclose the total estimated cost of the conversion with separate line items for printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, the cost of conducting the vote, and any other conversion-related expenses.

As discussed in the ANPR, conversions have the potential to change members' access to the institution. 73 FR 5461, 5465 (Jan. 30, 2008). Some converting credit unions, for example, plan to shut certain branches after conversion. In addition, a credit union participating in a credit union shared branching network could lose access to that network if it becomes a bank. Likewise, some ATM networks limit their services to credit unions. Members accustomed to accessing their credit union accounts through a particular branch, shared branch, or an ATM need to know if the conversion has the potential to disrupt that access before voting on the conversion. NCUA is concerned, however, that credit unions seeking to convert have not always provided members with complete and accurate information about the potential for changes to services and facilities. *Id.* Accordingly, the proposal adds a disclosure in subparagraph (8) requiring disclosure of the conversion's affect on services and facilities.

NCUA will, at the request of a converting credit union, review draft notices and other member communications for compliance with NCUA rules. Some members may believe, erroneously, that NCUA's review of conversion-related materials in a particular conversion, and NCUA's non-disapproval of these materials, means that NCUA endorses the materials and, possibly, the proposed conversion. In fact, NCUA does not take a position on the merit of conversion proposals. NCUA conducts its reviews of the conversion materials and the associated process simply to fulfill its statutory duty of overseeing the methods and procedures of the member vote. 12 U.S.C. 1785(a)(2)(G)(ii). The ANPR requested comment on whether the disclosures to members should include a statement that NCUA does not approve of the proposed conversion. Most commenters opposed adding this statement because they found it biased, but several of these commenters also suggested they would not be opposed to a more neutral statement. Accordingly, the proposal adds a requirement in subparagraph (7) that the notice to members state that NCUA does not approve or disapprove of the conversion proposal. NCUA believes this disclosure is necessary to clarify for members what NCUA's role is in the conversion process.

Finally, the proposed revisions correct typographical errors in subparagraph (b)(4) and clarify the subject line of the e-mail forwarding a member communication on the conversion proposal in subparagraph (f)(2).

Sec. 708a.106 Membership approval of a proposal to convert.

As discussed above, the proposal moves the definition of "independent entity," currently located in paragraph (c) of this section, to the definitions section.

Sec. 708a.107 Certification of vote on conversion proposal.

NCUA has encountered situations where the converting credit union experienced significant difficulties in obtaining approval from the gaining regulators. In at least one of these situations, NCUA learned well after the conversion attempt that the Federal Deposit Insurance Corporation (FDIC) had expressed concerns about the business plan, continuing operation of branches, internal controls, and loan underwriting, all at the same time the credit union was beginning the member voting process on its conversion proposal. Knowing of these concerns in a timely manner would have assisted NCUA in its role in approving the methods and procedures used by the credit union to conduct its member vote, including the accuracy of the communications provided to members. Accordingly, the proposal includes a new paragraph (c) that requires converting credit unions to submit to NCUA with their certification of the member vote copies of any correspondence with any agency where that correspondence is related to the conversion.

Also, to fulfill NCUA's mission to protect the share insurance fund in an efficient manner, NCUA must be able to gauge whether, and when, converting credit unions are likely to actually complete their attempted conversions. If NCUA is aware that gaining regulators might delay or derail approval of the new charter, NCUA can better schedule its supervisory resources in the time period between member approval and actual conversion.

Sec. 708a.113 Voting guidelines.

Section 708a.113 contains guidance on conducting the member conversion vote. The proposal adds a new paragraph (e) to this section recommending that converting credit unions not use employees to solicit member votes. NCUA has observed a situation in which credit union management admitted that using employees to solicit votes diverted the employees from the primary duties in running the credit union. NCUA is also concerned that employees not be coerced to advocate a position on the conversion that they do not believe in.

NCUA also considered prohibiting employee solicitation of member votes, but most ANPR commenters were opposed to such a prohibition. For one thing, employees should be able to answer questions from members about the conversion, and it may be difficult to distinguish this activity from solicitation. Accordingly, the proposal does not contain an explicit prohibition on solicitation.

E. Proposed New Part 708a, Subpart C: Merger of Insured Credit Unions Into Banks

During the course of the past two decades, several credit unions have merged into banks. In some of these mergers, the continuing bank has been a been a mutual savings bank, such as the Roper Employees FCU merger into Carolina Federal Savings Bank. In other mergers, the continuing bank has been a stock bank, such as in the merger of Nationwide FCU merger into Nationwide Bank. Some of these mergers have been "two-step" mergers, that is, the credit union proposed to convert first to a bank and then immediately merge into an existing bank, such as in the merger of Salt City Hospital FCU into Beacon Federal Savings Bank. Other mergers have been "one-step" mergers, that is, the direct merger of the credit union into the bank, such as in the merger of Northeast Community Credit Union Into Haverhill Cooperative Bank.

What all of the above mergers, and other mergers not mentioned, had in common was that they were conducted and completed on an *ad hoc* basis. The FCU Act requires that no FICU may merge with a bank without the prior approval of the NCUA Board, 12 U.S.C. 1785(b)(1)(A), and the Act provides a listing of certain factors that the Board must consider when granting or withholding its approval. 12 U.S.C. 1785(c). Still, NCUA has never had any regulations establishing the procedural or substantive requirements for obtaining the approval of the NCUA Board or the credit union's members with regard to a particular merger proposal. This lack of regulations has resulted in the Board adopting merger procedures and other merger requirements on an *ad hoc* basis each time a merger proposal has come to the Board.

The Board believes that it is time to replace the current, uncertain process with a regulation that prescribes a clear, predictable process governing all future merger proposals. The decision to convert a credit union charter to a bank charter through a merger fundamentally affects on the ownership rights of the credit union's members, and there should be a clearly defined process that protects those rights. There probably will be some credit unions that wish to merge with banks, and the credit unions considering such action deserve to know in advance the process and procedures governing these mergers. The rulemaking process will help define and standardize those procedures.

In crafting this rule, the Board considered its statutory responsibilities for approving mergers. 12 U.S.C. 1785(b), (c). The Board also looked to the existing regulatory procedures for credit union-into-credit union mergers, 12 CFR 708b, and for credit union conversions to mutual savings banks, 12 CFR 708a. A section-by-section discussion of the proposed rule follows.

Sec. 708a.301 Definitions.

This section provides definitions of key terms used throughout the regulation.

For example, the proposal defines *merger* as any transaction in which a FICU transfers all, or substantially all, of its assets to a bank. The merger provisions of subpart C also apply to any purported conversion of a credit union to a bank if the purported conversion is conducted pursuant to an agreement between a preexisting bank and the credit union that provides (1) the credit union will not conduct business as a stand-alone bank, and (2) the purported conversion will be followed by the transfer of all, or substantially all, of the credit union's assets to the preexisting bank.

This definition of merger means that NCUA will apply the provisions of subpart C to both "one-step" and "two-step" mergers. Regardless of whether the merger is accomplished in one or two steps as described above, in form it is still a merger, and thus subject to NCUA's approval under § 205(b)(1)(A) and (c) of the FCU Act. 12 U.S.C. 1785(b)(1)(A) and (c). A transaction in which a credit union purports to convert to a bank—but never actually opens its doors as a converted, stand alone bank—is not a true conversion governed by the requirements of § 205(b)(2) of the FCU Act. 12 U.S.C. 1785(b)(2).

Other key definitions are discussed below in the context they appear.

Sec. 708a.302 Authority to merge.

This section provides that a FICU, with the approval of its members, may merge into a bank only with the prior approval of NCUA, the Federal Deposit Insurance Corporation, and the regulator of the continuing bank. If the credit union is state chartered, it also needs the prior approval of its state regulator.

Sec. 708a.303 Board of directors' approval and members' opportunity to comment.

The section describes what the board of directors of a credit union must do prior to adopting a proposal to merge with a particular bank.

The directors must conduct due diligence so as to determine that the concept of merging with a bank, and with the particular bank under consideration, is in the best interests of the credit union's members. As part of this due diligence, the directors must determine the merger value of the credit union, that is, the amount of money that a stock bank would pay in an arms-length transaction to purchase the credit union's assets and assume its liabilities and shares. The rule permits the credit union to obtain this valuation through either a public auction process or an independent appraisal process. The merger proposal may then be approved by an affirmative vote of a majority of board members who have determined that the merger partner selected by the directors is the best choice for the members, taking into account the merger value of the credit union and the amount that the selected merger partner is willing to pay the credit union's members to effect the merger.

The merger value of the credit union is important for the following reasons. The merger of a credit union into a bank will cause members to either (1) lose their ownership rights entirely, as in a merger with a stock bank, or (2) see a diminution in the ownership rights in a merger with a mutual bank. *See* 71 FR 77150, 77153 (Dec. 22, 2006) (Discussion in preamble to NCUA's final rule on conversion of credit unions to mutual savings banks). Following the merger, the credit union's members will also likely see a worsening of their rates and fees. *Id.,* at 77157–58. See also the DATATRAC rate data posted on NCUA's Web site at *http://www.ncua.gov/DataServices/BankRateData/index.aspx.* Accordingly, the draft rule text seeks to ensure the credit union's members are properly compensated for these losses. The best way to ensure that the member is compensated for these losses it to obtain an informed valuation for the transfer of the credit unions assets, either through an auction or appraisal process.

Precedent exists for the use of an appraisal process. During the 2006–2007 merger of Nationwide Federal Credit Union into Nationwide Bank, the continuing bank obtained an independent appraisal of the value of

the credit union's accounts and the bank made a significant payment for those accounts. The payment, which included the net worth of the credit union plus a premium, was ultimately distributed to the credit union's members in compensation for their loss of ownership rights. Similar appraisal and auction valuation techniques have been employed in the merger of one bank into another. For example, in a 1998 letter from the FDIC to an MSB considering a merger into a stock bank the FDIC wrote:

> Neither FDIC nor OTS regulations regarding conversions specify a methodology for determining fair value for an institution in the context of a merger/conversion. In the preamble to the FDIC Final Rule on conversions, the FDIC indicated that industry innovation was encouraged. One method of determining value which may have validity would be to "shop" the institution among prospective acquirers. This methodology would establish a market-based value, which the converting institution's board could take into consideration, in the proper exercise of its fiduciary duty, when determining whether a specific proposal would provide for a distribution of appropriate value to rightful recipients. The FDIC looks for tangible evidence that the board of an institution proposing to enter into a merger/conversion marketed the institution widely enough to ascertain a valid market-based value. While a formal "shopping" of the mutual savings bank is not required [for several reasons] * * * the FDIC continues to strongly encourage mutual institutions that are considering any form of a merger/conversion proposal to demonstrate their best effort to "shop" the institution among prospective acquirers. Such institutions should not rely on the FDIC's action on [Corry Savings Bank's] notice, which was dependent upon a number of factors, as a precedent for their respective merger/conversion proposal.

Letter from Mark S. Schmidt, Associate Director, to the Board of Trustees of Corry Savings Bank, dated July 16, 1998, available at *http://www.fdic.gov/regulations/laws/bankdecisions/Mutual/CorrySavings.html.*

If the credit union chooses to use the appraisal process, the credit union must use a "qualified appraisal entity" to conduct the appraisal. Section 708a.301 of the proposal defines such an entity as:

> [A]n entity that has significant experience in the valuation of depository institutions and that has no past financial relationship with the merging credit union, the continuing bank, or any law firm representing the credit union or the bank in connection with the merger.

The intent is to ensure that this entity provides an unbiased appraisal that ensures the members receive appropriate consideration for the effects of the transaction on their financial interests. The Board specifically does not want an appraisal from an entity that might be influenced to undervalue the transaction so as to facilitate the transaction at the expense of the members' interests. The Board invites comment on this proposed definition and how it might be improved without sacrificing the intent.

If the merging credit union's directors pursue an appraisal rather than a public auction, they must publish an advance notice of the proposal to merge that alerts their members to the pending possibility of a merger. The rule also requires that the directors collect, review, and retain any comments about the merger proposal that they receive during the merger process.

Sec. 708a.304 Notice to NCUA and request to proceed with member vote.

Following adoption of a merger proposal, the credit union's board of directors must provide its NCUA Regional Director with a Notice of Intent to Merge and Request for NCUA Authorization to proceed with the member vote (NIMRA). The contents of the NIMRA are similar to the merger proposal documentation that two credit unions desiring to merge with each other must submit to NCUA. 12 CFR 708b.103, 708b.104. The NIMRA requires certain additional documentation related to the merger valuation and merger payments to be made to members; certain information about any merger-related compensation to be received by any director of senior management official of the merging credit union; and a certification that the directors believe the merger is in the best interests of the credit union's members. The NIMRA must also include a description of the due diligence conducted by the directors in determining that the merger is in the best interests of the members and that the merger satisfies the statutory considerations for such members in § 205(c) of the FCU Act. For state chartered credit unions, the NIMRA must include a discussion of the authority for such mergers under state law and the use by the credit union of any parity provision. This discussion is similar to that required by § 708a.5(a)(3) of NCUA's rules governing conversions of credit unions to mutual savings banks.

If the Regional Director receives a NIMRA from a credit union, the Regional Director will, for state charters, consult with the appropriate state supervisory authority. The Regional Director will then, for both state and Federal charters, either disapprove the merger proposal or authorize the credit union to proceed with a vote of its members on the proposal.

The proposed regulation specifies that the Regional Director must disapprove the proposed merger if the NIMRA either lacks the documentation required by this section or lacks substantial evidence to support each of the factors in § 205(c) of the Act. Two of the important considerations in that section of the Act are "the economic advisability of the transaction," 12 U.S.C. 1785(c)(3), and whether the transaction meets "the convenience and needs of the members," 12 U.S.C. 1785(c)(5). In particular, the Regional Director must disapprove the proposed merger for failing to meet the requirements of these two provisions of the Act if the if the merger payment offered by the bank to the members is less than the merger valuation, absent some additional, quantifiable benefit to the members from the selected merger partner. Similarly, the Regional Director must disapprove the proposed merger if the NIMRA fails to adequately explain the nature and amount of any merger-related compensation to be received by the credit union's directors or senior management officials or to justify that compensation.

If the Regional Director disapproves a merger proposal, the credit union may appeal the Regional Director's determination to the NCUA Board. The appeal must be filed within 30 days, and the Board has 120 days to act on the appeal.

Sec. 708a.305 Disclosures and communications to members.

After a credit union's board of directors approves a merger proposal and receives NCUA approval to proceed with the member vote, the credit union will schedule a special meeting and then mail the notice of vote twice to the members: 90 days before the special meeting and 30 days before. The credit union will also prepare and send the ballot with the 30 day notice.

The proposal describes the required content of the two notices, including disclosures to enable members to make an informed decision about the merger. The disclosures are, for the most part, similar to those required by NCUA's rules governing the conversions of credit unions to mutual savings banks in part 708a. 12 CFR part 708a. The rule has slightly different disclosure requirements depending on whether the continuing bank is organized in mutual form or stock form. For example, the required boxed disclosure for a stock bank merger discusses the loss of ownership rights, while the required

boxed disclosure for a mutual stock bank merger discusses the potential profits for management associated with a future stock conversion. The rule also requires the disclosure of the merger value and whether the members will receive a merger payment based on the merger value. The rule provides a mechanism similar to that in part 708a for interested members to communicate with one another about the pending merger and also provides for a ballot form similar to that in part 708a.

Sec. 708a.306 Membership approval of a proposal to merge.

A proposal for merger requires approval by a majority of the members who vote on the proposal, with the additional requirements that at least 20 percent of the members eligible to vote must participate in the vote. This quorum requirement is the same as the quorum required when a credit union's members make certain other decisions affecting their fundamental rights, such as a share insurance conversion. 12 U.S.C. 1786(d)(2).

The board of directors must set a voting record date to determine member voting eligibility. The members may vote in person or by mail, and the vote must be by secret ballot and conducted by an independent entity. Again, these requirements are similar to the current requirements for conversion to a mutual savings bank in part 708a.

Sec. 708a.307 Certification of vote on merger proposal.

The board of directors of the merging credit union must certify the results of the membership vote to the Regional Director within 10 calendar days after the vote is taken. The certification requirements are similar to those required in a conversion to a mutual savings bank in part 708a.

Sec. 708a.308 NCUA approval of the merger.

Following the member vote, the Regional Director will review the methods by which the membership vote was taken and the procedures applicable to the membership vote. The Regional Director will determine if the notices and other communications to members were accurate, not misleading, and timely; if the membership vote was conducted in a fair and legal manner; and if the credit union has otherwise met the requirements of subpart C of part 708a, including whether there is substantial evidence that the factors in Section 205(c) of the Act are satisfied. After completion of this review, the Regional Director will approve or disapprove the proposed merger and issue the approval or disapproval within 30 calendar days of receipt from the credit union of the certification of the result of the membership vote. A merging credit union has 30 days to appeal any disapproval to the NCUA Board, and the NCUA Board will act on the appeal within 120 days of receipt. Again, this process is similar to the review process conducted by the Regional Director following the certification of member vote in a conversion to a mutual savings bank as described in part 708a.

Sec. 708a.309 Completion of merger.

The credit union must complete the merger within one year of the date of NCUA approval. If a credit union fails to complete the merger within one year the Regional Director will disapprove the merger, and the credit union's board of directors must then adopt a new merger proposal and solicit another member vote if it still desires to merge. The Regional Director may, upon timely request and for good cause, extend the one year completion period for an additional six months. The process of completion of the merger is substantially the same as the process for completion of a conversion to a mutual savings bank as described in part 708a.

Sec. 708a.310 Limits on compensation of officials.

No director or senior management official of an insured credit union may receive any economic benefit in connection with the merger of a credit union other than reasonable compensation and other benefits paid in the ordinary course of business. This compensation limitation is substantially the same as the limitation imposed in part 708a for conversions to a mutual savings bank.

Sec. 708a.311 Voting incentives.

If a merging credit union offers an incentive to encourage members to participate in the vote every reference to such incentive made by the credit union in a written communication to its members must also state that members are eligible for the incentive regardless of whether they vote for or against the proposed merger. This requirement is substantially the same as the requirement imposed in part 708a for conversions to a mutual savings bank.

Sec. 708a.12 Voting guidelines.

This section provides guidance on the conduct of the member vote. It is substantially the same as NCUA's guidance in part 708a on the conduct of the member vote in conversions to a mutual savings bank.

F. Proposed Amendments to Part 708b: Mergers of Federally-Insured Credit Unions With Other Credit Unions; Voluntary Termination or Conversion of Insured Status

Part 708b of NCUA's rules implements NCUA's authority under the FCU Act to prescribe rules governing mergers of federally-insured credit unions. Like other financial services entities, credit unions are increasingly consolidating, and this trend is likely to continue. Much of the consolidation in the credit union industry results from voluntary mergers of credit unions. The proposed amendments to Part 708b will help assure that management's decision to recommend a merger is based on sound business judgment reflecting the best interests of the members.

NCUA must review and approve any merger involving a FICU. 12 CFR 708b.104(a). As part of this process, merging credit unions must submit a merger plan to NCUA. *Id.* The proposed amendments in this area revise and clarify items in the merger plan submitted to NCUA.

If the merging credit union is a Federal credit union, members have right to vote on whether to approve the merger, unless NCUA determines the FCU is in danger of insolvency and waives the member vote. 12 CFR 708b.106, 708b.105(b). Under the proposal, FCUs would have to disclose to members the same additional information the proposal requires in the merger plan submitted to NCUA before the member vote on the merger proposal.

A section-by-section summary of the proposed changes follows.

Sec. 708b.2 Definitions.

The proposal adds definitions for the terms "conducted by an independent entity," "merger-related financial arrangement," and "secret ballot," and "senior management official." The new definitions of "conducted by an independent entity" and "secret ballot" clarify requirements for balloting in insurance conversions, and match the proposed revisions to the voting requirements in Subpart A of Part 708a (conversions to mutual savings banks). The new definitions of "merger-related financial arrangement" and "senior management official" relate to the proposed new required disclosures in connection with credit union mergers. Each of these definitions is discussed in greater detail in the relevant section below.

Sec. 708b.103 Preparation of merger plan.

1. Share Adjustments

The proposal amends subparagraph (a)(5) of this section to require additional information in the merger plan submitted to NCUA in cases where the merging credit union has a higher net worth ratio (NWR) than the continuing credit union. In these situations, the proposal would require the merger plan to discuss not only actual share adjustments, but an explanation of the factors used to establish the amount of the adjustment or to determine no adjustment is necessary.

NCUA is proposing these additional disclosures because of the potential for unfair treatment of members of the credit union with higher net worth. In many merger situations, a smaller credit union offering limited services seeks to merge with a larger credit union. Often, the smaller, merging credit union will have a NWR much higher than the continuing credit union's NWR. Credit unions' only source of capital is retained earnings, so the higher NWR of the merging credit union represents retained earnings directed toward increasing the NWR, perhaps in lieu of spending on additional service or products, or more favorable rates on savings and loans. In these situations, the members of the merging credit union have paid for their higher NWR with fewer services or less favorable rates on savings and loan products, or both. These members then face the potential dilution of their membership interests as a result of the merger if the merging credit union's capital is simply subsumed into the less well-capitalized continuing credit union.

One way to prevent this loss of equity by members of a merging credit union that has a higher NWR than the continuing credit union is to compensate members of the merging credit union with a merger dividend, termed a share adjustment in Part 708b. In a share adjustment, some or all of the capital of the credit union with the highest NWR that is above the amount of capital needed to match NWR of the other credit union would be distributed to members of credit union with the higher NWR. Current rules require the merger plan to include only an explanation of any proposed share adjustment as part of the merger. 12 CFR 708b.105(a)(5). Under the proposal, where a merging credit union has a significantly greater NWR than the continuing credit union, meaning in excess of 500 basis points greater, the required explanation must also include the factors considered in establishing the amount of the adjustment or in determining no adjustment is necessary.

Many ANPR commenters opposed any NCUA-mandated share adjustment or calculation method. Most of these opposing commenters cited the need for credit union boards of directors and market forces to determine whether and how much of a share adjustment should be paid in each particular situation. Consistent with these comments, the proposal does not require a share adjustment or specific calculation method. Instead, the proposal simply requires that where a merging credit union has a significantly greater NWR than a continuing credit union, credit union management disclose the basis for its calculation of a share adjustment or the determination that a share adjustment is unnecessary.

2. Disclosure of Merger-Related Financial Arrangements

The proposal amends paragraph (a) of this section to add a new paragraph (f), requiring all federally insured credit unions disclose to NCUA any "merger-related financial arrangements" received by officials or senior managers of a merging credit union in connection with the merger.[12] A merger-related financial arrangement is defined as:

> [A] material increase in compensation (including indirect compensation, for example, bonuses, deferred compensation, or other financial rewards) or benefits that any board member or senior management official of a merging credit union may receive in connection with a merger transaction. For purposes of this definition, a material increase is an increase that exceeds the greater of 15 percent or $10,000.

Proposed § 708b.2. "Senior management official" is defined as

> [A] chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the financial institution regulatory agencies pursuant to section 32(f) of the Federal Deposit Insurance Act.

This definition is currently included in § 708a, but was not in § 708b. NCUA first proposed an amendment requiring merging FICUs to disclose any material increase in compensation for officials and senior managers in 2007, with a material increase defined as the greater of 15 percent of $10,000. 72 FR 20067 (April 23, 2007). This proposed definition of material is identical to a definition of material employed by the Office of Thrift Supervision (OTS) in a similar context. 12 CFR 563.22(d)(1)(vi)(C). Under the OTS rule, an increase in compensation paid to an officer, director or controlling person of a merging Federal thrift of savings bank is presumed to be unreasonable if it exceeds the greater of 15 percent or $10,000. *Id.*

The Board intends that all compensation arrangements, formal and informal, be covered by this disclosure requirement. The scope of disclosure includes both arrangements that are written and those not immediately reduced to writing, as well as arrangements involving deferred compensation.

The proposed revisions to the merger plan regarding the calculation of any share adjustment and the existence of merger-related financial arrangements are disclosure requirements only. That is, the proposal would not prohibit a higher net worth credit union from merging into a lower net worth credit union without paying a merger dividend to members of the merging credit union, as long as this fact and the reasoning behind it is disclosed to NCUA and, for FCUs, to members. Similarly, the proposal would not prohibit mergers where the merger resulted in a material increase in compensation to directors or senior management officials of the merging credit union, as long as this fact is properly disclosed.

Sec. 708b.104 Submission of merger proposal to the NCUA.

This section details the requirements for the merger proposal submitted to NCUA, and the current paragraph (a)(8) requires a statement about whether a merging credit union, if it is above $50 million in assets, plans to submit a Hart-Scott-Rodino Act (HSRA) premerger notification to the Federal Trade Commission (FTC). The HSRA requires certain entities contemplating a merger to notify the FTC of the pending merger and wait for a designated time period before consummating the merger. 15 U.S.C. 18a(a)(2)(B)(i). Only mergers above a certain asset size threshold are subject to the notification requirement, and the FTC adjusts this threshold amount annually. *Id.* The proposal updates the $50 million threshold in paragraph (a)(8) to the current threshold amount for HSRA filings, which is $63.4 million for 2010. 75 FR 3468 (Jan. 21, 2010).

Sec. 708b.106 Approval of the merger vote by members.

This section addresses the member vote generally required when the merging credit union is an FCU, and lists the required elements of the notice to members. Subparagraph (a)(2)(ii) of

[12] Proposed 708b.106, discussed below, requires a similar disclosure to members preceding the member vote.

this section requires that the members be given a summary of the merger plan. The proposal amends this subparagraph to require this summary include a detailed description of any "merger-related financial arrangement" made available to any board member or senior management official of the merging credit union. The description must include the name and title of each individual recipient and an explanation of the financial impact of each element of the arrangement, including direct salary increases and any indirect compensation, such as any bonus, deferred compensation or other financial rewards. As noted above, the term merger-related financial arrangement applies only to material increases in compensation, which means an increase exceeding the greater of $15,000 or 10 percent of the individual's compensation.

Sec. 708b.107 Certificate of vote on merger proposal.

The proposal corrects a typographical error in the title of this section. The corrected title is "Certification of vote on merger proposal."

Sec. 708b.201 Termination of insurance.

This section addresses state credit unions terminating Federal share insurance, and requires member votes taken in connection with share insurance termination to be conducted by an independent entity and secret ballot. Because the proposal includes the terms "secret ballot" and "independent entity" in the definitions section, the proposal deletes the existing explanation of secret ballot in paragraph (c) of § 708b.201.

Sec. 708b.203 Conversion of insurance.

This section addresses credit unions converting from Federal share insurance to nonfederal insurance, and implements the statutory requirement that at least 20 percent of credit union members must vote on the conversion proposal in order to approve it. 12 U.S.C. 1786(d)(2). Paragraph (d) of this section also requires member votes taken in connection with share insurance conversions to be conducted by an independent entity and secret ballot. Because the proposal includes the terms "secret ballot" and "independent entity" in the definitions section, the proposal deletes the existing explanation of secret ballot in paragraph (d) of § 708b.203.

The current paragraph (g) of this section also states that, generally, NCUA will act to approve or disapprove a conversion within 14 days of receiving the certification of vote. The proposal amends paragraph (g) to clarify that such approval is conditional on the credit union completing the conversion within six months of the date of the NCUA approval letter. This six month timeframe ensures that the conversion is completed before the member vote becomes stale and also ensures that NCUA can properly plan for and allocate scarce examination resources that would otherwise be devoted to examining the converting credit union. Six months should be more than ample time to complete the conversion, since the credit union will already have obtained the approval of the gaining insurer for the conversion prior to notifying NCUA of the credit union's intent to convert. 12 CFR 708b.204(e)(2).

Sec. 708b.206 Share insurance communications to members.

Currently, paragraph (b) of this section requires that certain communications about a pending share insurance conversion that a converting credit union provides to its members must include the following disclosure:

IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK."

The proposal amends and this disclosure language slightly by changing the third sentence to read:

IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE WITH (insert name of private share insurer) AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK."

This clarification ensures the reader understands the reference to "private insurance."

Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a rule may have on a substantial number of small credit unions, defined as those under ten million dollars in assets. At this time, NCUA does not believe that this proposed rulemaking will have a significant economic impact on a substantial number of small credit unions.

As discussed above, the proposed fiduciary standards for FCUs are intended to replace existing standards on a state-by-state basis, so these new standards should not have a significant impact on small credit unions. The proposal does specifically provide that an FCU director "have a working familiarity with basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement," but this requirement would likely be implicit in the existing state fiduciary standards governing a Federal credit union since all credit unions are financial institutions and all credit union directors must obtain some level of familiarity to properly perform their governance function. If a director of a small, noncomplex credit union does not begin his or her directorship with such familiarity, the director should be able to obtain this familiarity shortly after assuming the directorship. Training is available from various external sources and, for small credit unions, training is also available from NCUA's Office of Small Credit Union Initiatives.

Also, the proposed rules related to bank conversions and mergers should not affect a substantial number of small credit unions because very few credit unions typically seek such a charter conversion, and those that do seek such a charter are not small. Finally, the proposed revisions to the rules relating to credit union mergers with other credit unions are seem economically significant. NCUA invites comment, however, on the potential economic impact of this rulemaking on small credit unions, including the nature of the impact, the size of the impact, and the number of small credit unions that could be affected in any given year. NCUA also invited comment on the necessity for a Regulatory Flexibility Act analysis.

B. Paperwork Reduction Act

Currently, parts 708a and 708b contain various information collection requirements as described in the Paperwork Reduction Act of 1995 and implemented by the Office of Management and Budget (OMB) and previously submitted by NCUA. 44 U.S.C. 3507(d); 5 CFR part 1320. The proposed revisions to part 708a include a new subpart C: Merger of Insured Credit Unions into Banks. This new subpart will increase the existing paperwork burden, since the existing part 708b on Mergers of Federally Insured Credit Unions only applies to

mergers involving two credit unions. Accordingly, as required by the Paperwork Reduction Act, NCUA is forwarding an information collection package to the OMB for its review and approval on the mergers of insured credit unions with banks to revise a prior collection.

The proposed new subpart C of part 708a ensures that (1) Directors of credit unions perform sufficient due diligence on any proposed merger so as to ensure the merger is in the best interests of the credit union's members, (2) the credit union provides NCUA with sufficient information about the proposed transaction for NCUA to fulfill its statutory duties, and (3) the credit union provides its members with sufficient information to enable them to vote on the proposal. Based on the history of such merger proposals, NCUA estimates that approximately one credit union a year will propose to merge with a bank. NCUA further estimates the annual reporting and recordkeeping burden associated with the new rule for each merging credit union at about 714 hours, for a total annual burden of 714 hours. This estimate is calculated as follows.

Proposed § 708a.303(a) requires a merging credit union to obtain a merger valuation. NCUA estimates that it will take a credit union approximately 50 hours to obtain such a merger valuation.

Proposed § 708a.303(b) requires, under certain circumstances, that a merging credit union prepare and publish an advance notice of intent to merge. NCUA estimates that it will take a credit union approximately 2 hours to prepare an advance notice of intent to merge.

Proposed § 708a.303(c) requires that a merging credit union solicit and review member comments. NCUA estimates that it will take a credit union approximately 10 hours to solicit and review any member comments.

Proposed § 708a.303(d), and associated due diligence requirement in § 708a.304(d), require that a merging credit union's directors conduct due diligence and affirmatively approve a proposal to merge. NCUA estimates that it will take the directors approximately 50 hours to properly consider and approve such a proposal.

Proposed § 708a.304(a) and (b) require that a merging credit union prepare and submit to NCUA a Notice of its Intent to Merge and Request for NCUA Authorization (NIMRA) to conduct a member vote. The preparation of the NIMRA, and the associated merger plan, requires collection and preparation of numerous items, and NCUA estimates this collection and preparation will take about 100 hours.

Proposed § 708a.304(c) requires that a merging credit union prepare a director's certification of support for the merger proposal and plan. NCUA estimates this collection and preparation will take about 1 hour.

Proposed §§ 708a.305 and 708a.306 require that a merging credit union conduct a member vote on the proposed merger. Members must be allowed to vote either by mail or in person at a special meeting. NCUA estimates the preparation and mailing of notices and ballots, and the collection of ballots, will take about 500 hours.

Proposed § 708a.305(g) requires that, when a member of a merging credit union requests to communicate with other members, the merging credit union provide such communication to other members at the expense of the requesting member. NCUA estimates the associated burden on the merging credit union at zero hours.

Proposed § 708a.307 requires that a merging credit union certify the results of the member vote to NCUA. NCUA estimates that the preparation of the certification will take about 1 hour.

The following table summarizes this information.

Proposed rule section (part 708a, subpart C)	Estimated associated burden (hours)
§ 708a.303(a)	50
§ 708a.303(b)	2
§ 708a.303(c)	10
§ 708a.303(d) and § 708a.304(d)	50
§ 708a.304(a) and § 708a.304(b)	100
§ 708a.304(c)	1
§ 708a.305 and § 708a.306	500
§ 708a.305(g)	0
§ 708a.307	1
Total Estimated Burden Hours (per Respondent) =	714
Estimated Number of Respondents (Annual) =	× 1
Total Annual Burden Hours =	714

Organizations and individuals desiring to submit comments on the proposed information collection requirements should send them to: Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Washington, DC 20503; Attention: National Credit Union Administration Desk Officer, with a copy to Mary Rupp, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The NCUA considers comments by the public on this proposed collection of information in:

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the NCUA, including whether the information will have a practical use;
- Evaluating the accuracy of the NCUA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

The Office of Management and Budget will make a decision concerning the collection of information contained in the proposed regulation between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the NCUA on the proposed regulation.

C. Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. The proposed rule would not have substantial direct effects on the states, on the connection between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined that this proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The NCUA has determined that the proposed rule would not affect family well-being within the meaning of § 654 of the Treasury and General Government Appropriations Act, 1999,

Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 701

Credit unions, Loans.

12 CFR Part 708a

Charter conversions, Credit unions, Mergers of credit unions.

12 CFR Part 708b

Credit unions, Mergers of credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 18, 2010.

Mary Rupp,

Secretary of the Board.

For the reasons stated in the preamble, the National Credit Union Administration proposes to amend 12 CFR parts 701, 708a, and 708b as set forth below:

PART 701—ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS

1. The authority citation for part 701 continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789. Section 701.6 is also authorized by 31 U.S.C. 3717. Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.;* 42 U.S.C. 1981 and 3601–3619. Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Add a new § 701.4 to read as follows:

§ 701.4 General authorities and duties of Federal credit union boards of directors.

(a) *Management of a Federal credit union.* The management of each Federal credit union is vested in its board of directors. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's management is non-delegable.

(b) *Duties of Federal credit union directors.* Each Federal credit union director has the duty to:

(1) Carry out his or her duties as a director in good faith, in a manner such director reasonably believes to be in the best interests of the membership of the Federal credit union, and with such care, including reasonable inquiry, as an ordinarily prudent person in a like position would use under similar circumstances;

(2) Administer the affairs of the Federal credit union fairly and impartially and without discrimination in favor of or against any particular member;

(3) At the time of election or appointment, or within a reasonable time thereafter, not to exceed three months, have at least a working familiarity with basic finance and accounting practices, including the ability to read and understand the Federal credit union's balance sheet and income statement and to ask, as appropriate, substantive questions of management and the internal and external auditors; and

(4) Direct the operations of the Federal credit union in conformity with the requirements set forth in the Federal Credit Union Act, this chapter, other applicable law, and sound business practices.

(c) *Authority regarding staff and outside consultants.* (1) In carrying out its duties and responsibilities, each Federal credit union's board of directors and all its committees have authority to retain staff and outside counsel, independent accountants, financial advisors, and other outside consultants at the expense of the Federal credit union.

(2) Federal credit union staff providing services to the board of directors or any committee of the board under paragraph (c)(1) of this section may be required by the board of directors or such committee to report directly to the board or such committee, as appropriate.

(3) In discharging board or committee duties, a director who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports or statements, including financial statements and other financial data, prepared or presented by any of the persons specified in paragraph (d).

(d) *Reliance.* A director may rely on:

(1) One or more officers or employees of the Federal credit union who the director reasonably believes to be reliable and competent in the functions performed or the information, opinions, reports or statements provided;

(2) Legal counsel, independent public accountants, or other persons retained by the Federal credit union as to matters involving skills or expertise the director reasonably believes are matters

(i) Within the particular person's professional or expert competence, and

(ii) As to which the particular person merits confidence; and

(3) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

3. Add paragraph (c)(5) of § 701.33 to read as follows:

§ 701.33 Reimbursement, insurance, and indemnification of officials and employees.

* * * * *

(c) * * *

(5) Notwithstanding paragraphs (c)(1) through (3) of this section, a Federal credit union may not indemnify an official or employee for personal liability related to any decision made by that individual on a matter significantly affecting the fundamental rights and interests of the FCU's members where the decision giving rise to the claim for indemnification is determined by a court to have constituted gross negligence, recklessness, or willful misconduct. Matters affecting the fundamental rights and interests of FCU members include charter and share insurance conversions and terminations.

4. Section 8 of Article XVI of appendix A to part 701 is revised to read as follows:

Appendix A to Part 701—Federal Credit Union Bylaws

* * * * *

Article XVII. Amendments of Bylaws and Charter

* * * * *

Section 8. *Indemnification.* (a) Subject to the limitations in § 701.33(c)(5) of the regulations, the credit union may elect to indemnify to the extent authorized by (check one)

[ ] law of the state of _____:

[ ] Model Business Corporation Act:

the following individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties (check as appropriate).

[ ] current officials
[ ] former officials
[ ] current employees
[ ] former employees

(b) The credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(c) The term "official" in this bylaw means a person who is a member of the board of directors, credit committee, supervisory committee, other volunteer

committee (including elected or appointed loan officers or membership officers), established by the board of directors.

PART 708a—BANK CONVERSIONS AND MERGERS

5–6. Revise the authority citation for part 708a to read as follows:

Authority: 12 U.S.C. 1766, 1785(b), and 1785(c).

7. Revise the heading for part 708a to read as set forth above:

§§ 708a.1 through 708a.13 [Redesignated as §§ 708a.101 through 708a.113]

8a. Redesignate §§ 708a.1 through 708a.13 as §§ 708a.101 through 708a.113, respectively.

Subpart A—Conversion of Insured Credit Unions to Mutual Savings Banks

8b. Add a new subpart A, consisting of newly redesignated §§ 708a.101 through 708a.113 with the heading as shown above:

9. Amend § 708a.101 by adding definitions of "conducted by an independent entity," "independent entity," and "secret ballot" to read as follows:

§ 708a.101 Definitions

* * * * *

Conducted by an independent entity means:

(1) The independent entity will receive the ballots directly from voting members and store them.

(2) After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting.

(3) The independent entity will certify the final vote tally in writing to the credit union and provide a copy to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit union prior to certifying the final vote tally.

* * * * *

Independent entity means a company with experience in conducting corporate elections. No official or senior management official of the credit union, or the immediate family member of any official or senior management official, may have any ownership interest in, or be employed by, the entity.

* * * * *

Secret ballot means no credit union employee or official can determine how a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots.

* * * * *

10–11. Amend § 708a.104 as follows:

a. In paragraph (b)(4)(i), add the word "of" after the word "Plan".

b. In paragraph (b)(4), revise the paragraph designation "(ii)" to "(iii)" the second time it appears.

c. Revise paragraphs (c)(4) and (5), and add new paragraphs (c)(6), (7), and (8).

d. In paragraph (f)(2), add the phrase "to a Bank" after the word "Conversion" in the last sentence.

The revisions and additions read as follows:

§ 708a.104 Disclosures and communications to members.

* * * * *

(c) * * *

(4) An affirmative statement that, at the time of conversion to a mutual savings bank, the credit union does or does not intend to convert to a stock institution or a mutual holding company structure;

(5) A clear and conspicuous disclosure of the estimated, itemized cost of the proposed conversion, including printing fees, postage fees, advertising, consulting and professional fees, legal fees, staff time, the cost of holding a special meeting, other costs of conducting the vote, and any other conversion-related expenses;

(6) A clear and conspicuous disclosure of how the conversion from a credit union to a mutual savings bank will affect the institution's ability to make non-housing-related consumer loans because of a mutual savings bank's obligations to satisfy certain lending requirements as a mutual savings bank. This disclosure should specify possible reductions in some kinds of loans to members;

(7) A clear and conspicuous disclosure that the National Credit Union Administration does not approve or disapprove of the conversion proposal or the reasons advanced in support of the proposal; and

(8) A clear and conspicuous disclosure of how the conversion from a credit union to a mutual savings bank is likely to affect the availability of facilities and services. At a minimum, this disclosure should include the name and location of any branches, including shared branches, and automatic teller networks, to which members may lose access as a result of the conversion. This disclosure must be based on research and analysis completed before the date the board of directors votes to adopt the conversion proposal.

* * * * *

12. Amend § 708a.107 by adding paragraph (c) to read as follows:

§ 708a.107 Certification of vote on conversion proposal.

* * * * *

(c) The certification must be accompanied by copies of all correspondence between the credit union and any Federal banking agency whose approval is required for the conversion.

13. Amend § 708a.113 by adding paragraph (e) to read as follows:

§ 708a.113 Voting guidelines.

* * * * *

(e) *Solicitation of votes.* Some credit unions may wish to contact members who have not voted and encourage them to vote on the conversion proposal. However, using credit union employees to solicit votes can lead to problems. NCUA is aware of at least one instance where credit union employees were directed to solicit member votes for the conversion, forcing them to neglect duties critical to the credit union's safe and sound operations. Also, employees may feel pressured to solicit votes for the conversion, regardless of whether or not they support it. Given these potential problems, NCUA recommends that a converting credit union planning to solicit votes use a third party to solicit votes rather than diverting credit union employees from their usual duties.

Subpart B—[Reserved]

14a. Add a reserved subpart B.

14b. Add subpart C to part 708a to read as follows:

Subpart C—Merger of Insured Credit Unions Into Banks

Sec.

708a.301 Definitions.
708a.302 Authority to merge.
708a.303 Board of directors' approval and members' opportunity to comment.
708a.304 Notice to NCUA and request to proceed with member vote.
708a.305 Disclosures and communications to members.
708a.306 Membership approval of a proposal to merge.
708a.307 Certification of vote on merger proposal.
708a.308 NCUA approval of the merger.
708a.309 Completion of merger.
708a.310 Limits on compensation of officials.
708a.311 Voting incentives.

708a.312 Voting guidelines.

Subpart C—Merger of Insured Credit Unions into Banks

§ 708a.301 Definitions.

As used in this part:

Bank has the same meaning as in section 3(a) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(a).

Clear and conspicuous means text in bold type in a font size at least one size larger than any other text used in the document (exclusive of headings), but in no event smaller than 12 point.

Credit union has the same meaning as insured credit union in section 101 of the Federal Credit Union Act.

Distribution formula is the formula the bank will use to determine each member's portion of that payment to be received upon completion of the merger.

Federal banking agencies have the same meaning as in section 3 of the Federal Deposit Insurance Act.

Merger means any transaction in which a credit union transfers all, or substantially all, of its assets to a bank. The term *merger* includes any purported conversion of a credit union to a bank if the purported conversion is conducted pursuant to an agreement between a preexisting bank and the credit union that provides—

(1) The credit union will not conduct business as a stand-alone bank, and

(2) The purported conversion will be followed by the transfer of all, or substantially all, of the credit union's assets to the preexisting bank.

Merger value or *merger valuation* is the amount that a stock bank would pay in an arms-length transaction to purchase the credit union's assets and assume its liabilities and shares (deposits).

Qualified appraisal entity means entity that has significant experience in the valuation of depository institutions and that has no past financial relationship with the merging credit union, the continuing bank, or any law firm representing the credit union or the bank in connection with the merger.

Regional director means the director of the NCUA regional office for the region where a natural person credit union's main office is located. For corporate credit unions, *regional director* means the director of NCUA's Office of Corporate Credit Unions.

Senior management official means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate Federal banking agencies pursuant to section 32(f) of the Federal Deposit Insurance Act.

§ 708a.302 Authority to merge.

A credit union, with the approval of its members, may merge into a bank only with the prior approval of NCUA, the Federal Deposit Insurance Corporation, and the regulator of the bank. If the credit union is state chartered, it also needs the prior approval of its state regulator.

§ 708a.303 Board of directors' approval and members' opportunity to comment.

(a) *Merger valuation.* Before selecting a bank merger partner and voting on a proposal to merge, a credit union's board of directors must determine, as part of its due diligence, the merger value of the credit union. In making its determination of the merger value of the credit union, the credit union must either:

(1) Conduct a well-publicized merger auction and obtain purchase quotations from at least three banks, two or more of which must be stock banks; or

(2) Retain a qualified appraisal entity to analyze and estimate the merger value of the credit union.

(b) *Advance notice.* A credit union that does not conduct a public auction as described in paragraph (a)(1) of this section must comply with the following notice requirements before voting on a proposal to merge.

(1) No later than 30 days before a board of directors votes on a proposal to merge, it must publish a notice in a general circulation newspaper, or in multiple newspapers if necessary, serving all areas where the credit union has an office, branch, or service center. It must also post the notice in a clear and conspicuous fashion in the lobby of the credit union's home office and branch offices and on the credit union's Web site, if it has one. If the notice is not on the home page of the Web site, the home page must have a clear and conspicuous link, visible on a standard monitor without scrolling, to the notice.

(2) The public notice must include the following:

(i) The name and address of the credit union;

(ii) The name and type of institution into which the credit union's board is considering a proposal to merge;

(iii) A brief statement of why the board is considering the merger and the major positive and negative effects of the proposed merger;

(iv) A statement that directs members to submit any comments on the proposal to the credit union's board of directors by regular mail, electronic mail, or facsimile;

(v) The date on which the board plans to vote on the proposal and the date by which members must submit their comments for consideration; which submission date may not be more than 5 days before the board vote;

(vi) The street address, electronic mail address, and facsimile number of the credit union where members may submit comments; and

(vii) A statement that, in the event the board approves the proposal to merge, the proposal will be submitted to the membership of the credit union for a vote following a notice period that is no shorter than 90 days.

(3) The board of directors must approve publication of the notice.

(c) *Member comments.* A credit union must collect and review any member comments about the merger received during the merger process. The credit union must retain the comments until the merger is consummated.

(d) *Approval of proposal to merge.* The merger proposal may only be approved by an affirmative vote of a majority of board members who have determined:

(1) A merger with a bank is in the best interests of the members, and

(2) The merger partner selected by the directors is the best choice for the members, taking into account the merger value of the credit union and the amount that the selected merger partner is willing to pay the credit union's members to effect the merger.

§ 708a.304 Notice to NCUA and request to proceed with member vote.

(a) *NIMRA.* If a credit union's board of directors adopts a proposal to merge, it must, within 30 days of the adoption, provide the Regional Director with a Notice of its Intent to Merge and Request for NCUA Authorization (NIMRA) to conduct a member vote.

The NIMRA must include the following:

(1) The merger plan (as described in paragraph (b) of this section);

(2) Resolutions of the boards of directors of both institutions;

(3) Certification of the board of directors (as described below);

(4) Proposed Merger Agreement;

(5) Proposed Notice of Special Meeting of the Members and any other communications about the merger that the credit union intends to send to its members, including electronic communications posted on a Web site or transmitted by electronic mail;

(6) Proposed ballot to be sent to the members;

(7) For state chartered credit unions, evidence that the proposed merger is authorized under state law (as described below);

(8) A copy of the bank's last two examination reports;

(9) A statement of the merger valuation of the credit union;

(10) A statement of whether any merger payment will be made to the members and how such a payment will be distributed among the members;

(11) Information about the due diligence of the directors in locating a merger partner and determining that the merger is in the best interests of the members of the credit union (as described below);

(12) Copies of all contracts reflecting any merger-related compensation or other benefit to be received by any director or senior management official of the credit union;

(13) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established annually by the Federal Trade Commission under 15 U.S.C. 18a(a)(2)(B)(i), currently $63.4 million, a statement about whether the two institutions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not;

(14) Copies of any filings the credit union or bank intends to make with another Federal or state regulatory agency in which the credit union or bank seeks that agency's approval of the merger; and

(15) Proof that the accounts of the credit union will be accepted for coverage by the Federal Deposit Insurance Corporation.

(b) *Merger plan.* The merger plan must include:

(1) Current financial statements for both institutions;

(2) Current delinquent loan summaries and analyses of the adequacy of the Allowance for Loan and Lease Losses account for both institutions;

(3) Consolidated financial statements of the continuing institution after the merger;

(4) Explanation of any provisions for reserves, undivided earnings or dividends;

(5) Provisions with respect to notification and payment of creditors; and

(6) Explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts.

(c) *Director certification.* The NIMRA must include a certification by the credit union's board of directors of their support for the merger proposal and plan. Each director who voted in favor of the merger proposal must sign the certification. The certification must contain the following:

(1) A statement that each director signing the certification supports the proposed merger and believes the proposed merger, and the selected bank merger partner, are both in the best interests of the members of the credit union;

(2) A description of all materials submitted to the Regional Director with the notice and certification;

(3) A statement that each board member signing the certification has examined all these materials carefully and these materials are true, correct, current, and complete as of the date of submission; and

(4) An acknowledgement that Federal law (18 U.S.C. 1001) prohibits any misrepresentations or omissions of material facts, or false, fictitious or fraudulent statements or representations made with respect to the certification or the materials provided to the Regional Director or any other documents or information provided to the members of the credit union or NCUA in connection with the merger.

(d) *Due diligence.* The NIMRA must include a description of all the credit union's due diligence in determining that the merger satisfies the factors contained in section 205(c) of the Act. In particular, the NIMRA must describe how the board located the merger partner, how the board negotiated the merger agreement, and how the board determined that this merger was in the best interests of the credit union's members. The description must include all information relied upon by the credit union in determining the merger value of the credit union, the amount of any payment to be made by the bank to the credit union's members (the "merger payment"), and, if that merger payment is less than the merger value of the credit union, an explanation why the merger and the merger partner selected is in the best interests of the members. The description must include an explanation of the distribution formula by which the merger payment will be distributed among the credit union's members.

(e) *State chartered credit unions.* A state chartered credit union must state as part of its NIMRA if its state chartering law permits it to merge into a bank and provide the specific legal citation. A state chartered credit union will remain subject to any state law requirements for merger that are more stringent than those this part imposes, including any internal governance requirements, such as the requisite membership vote for merger and the determination of a member's eligibility to vote. If a state chartered credit union relies for its authority to merge into a bank on a state law parity provision, meaning a provision in state law permitting a state chartered credit union to operate with the same or similar authority as a Federal credit union, it must:

(1) Include in its notice a statement that its state regulatory authority agrees that it may rely on the state law parity provision as authority to merge; and

(2) Indicate its state regulatory authority's position as to whether Federal law and regulations or state law will control internal governance issues in the merger such as the requisite membership vote for merger and the determination of a member's eligibility to vote.

(f) *Consultation with state authorities.* After receiving a NIMRA from a state chartered credit union, the Regional Director will consult with the appropriate state supervisory authority.

(g) *Regional Director approval.* After receiving a NIMRA, the Regional Director will either disapprove the proposed merger or authorize the credit union to proceed with its membership vote.

(1) The Regional Director will disapprove the proposed merger if the NIMRA either lacks the documentation required by this section or lacks substantial evidence to support each of the factors in section 205(c) of the Act. As part of this determination, the Region Director must disapprove the proposed merger if:

(i) The merger payment offered by the bank to the members is less than the merger valuation, absent some additional, quantifiable benefit to the members from the selected merger partner; or

(ii) The NIMRA fails to adequately explain the nature and amount of any compensation to be received by the credit union's directors or senior management officials in connection with the merger or to justify that compensation.

(2) NCUA's authorization to proceed with the member vote does not mean NCUA has approved of the merger proposal.

(h) *Appeal of adverse decision.* If the Regional Director disapproves a merger proposal, the credit union may appeal the Regional Director's determination to the NCUA Board. The credit union must file the appeal within 30 days after receipt of the Regional Director's determination. The NCUA Board will act on the appeal within 120 days of receipt.

§ 708a.305 Disclosures and communications to members.

(a) After the board of directors approves a merger proposal and receives NCUA's authorization as described in

§§ 708a.303 and 708a.304, the credit union must provide written notice of its intent to merge to each member who is eligible to vote on the merger. The notice to members must be mailed 90 calendar days and 30 calendar days before the date of the membership vote on the merger. A ballot must be included in the same envelope as the 30-day notice and only with the 30-day notice. A merging credit union may not distribute ballots with the 90-day notice, in any other written communications, or in person before the 30-day notice is sent.

(b)(1) The notice to members must adequately describe the purpose and subject matter of the vote and clearly inform members that they may vote at the special meeting or by submitting the written ballot. The notice must state the date, time, and place of the meeting.

(2) The 90-day notice must state in a clear and conspicuous fashion that a written ballot will be mailed together with another notice 30 days before the date of the membership vote on merger. The 30-day notice must state in a clear and conspicuous fashion that a written ballot is included in the same envelope as the 30-day notice materials.

(3) For purposes of facilitating the member-to-member contact described in paragraph (f) of this section, the 90-day notice must indicate the number of credit union members eligible to vote on the merger proposal and state how many members have agreed to accept communications from the credit union in electronic form. The 90-day notice must also include the information listed in paragraph (g)(9) of this section.

(4) The member ballot must include:

(i) A brief description of the proposal (*e.g.,* "Proposal: Approval of the Plan of Merger by which [insert name of credit union] will merge with a bank");

(ii) Two blocks marked respectively as "FOR" and "AGAINST;" and

(iii) The following language: "A vote FOR the proposal means that you want your credit union to merge with and become a bank. A vote AGAINST the proposal means that you want your credit union to remain a credit union." This language must be displayed in a clear and conspicuous fashion immediately beneath the FOR and AGAINST blocks.

(5) The ballot may also include voting instructions and the recommendation of the board of directors (*i.e.,* "Your Board of Directors recommends a vote FOR the Plan of Merger") but may not include any further information without the prior written approval of the Regional Director.

(c) For mergers into stock banks, an adequate description of the purpose and subject matter of the member vote on merger, as required by paragraph (b) of this section, must include:

(1) A clear and conspicuous disclosure that if the merger is approved the members will lose all of their ownership interests in the institution, including the right to vote, the right to share in the value of the institution should it be liquidated, the right to share in any extraordinary dividends, and the right to have the net worth of the institution managed in their best interests;

(2) A clear and conspicuous disclosure of any post-merger employment or consulting relationships offered by the bank to any of the credit union's directors and senior management officials and the amount of the associated compensation;

(3) A clear and conspicuous disclosure of how the merger of the credit union will affect the members' ability to obtain non-housing-related consumer loans from the bank because of the bank's obligations to satisfy statutory or regulatory lending requirements (if any). This disclosure should specify possible reductions in some kinds of loans to members;

(4) A clear and conspicuous statement of the merger value of the credit union, the total dollar amount the selected bank merger partner has agreed to pay to effect the merger, and the distribution formula the bank will use to determine each member's portion of that payment to be received upon completion of the merger; and

(d) For mergers into mutual banks, an adequate description of the purpose and subject matter of the member vote on merger, as required by paragraph (b) of this section, must include:

(1) A clear and conspicuous disclosure of how the merger will affect members' voting rights including whether the bank bases voting rights on account balances;

(2) A clear and conspicuous disclosure that the merger could lead to members losing all of their ownership interests in the credit union if the bank subsequently converts to a stock institution and the members do not purchase stock;

(3) A clear and conspicuous disclosure of any post-merger employment or consulting relationships offered by the bank to the credit union's directors and senior management officials and the associated compensation for each;

(4) A clear and conspicuous disclosure of how the merger of the credit union will affect the members' ability to obtain non-housing-related consumer loans from the bank because of the bank's obligations to satisfy statutory or regulatory lending requirements (if any). This disclosure should specify possible reductions in some kinds of loans to members;

(5) A clear and conspicuous statement that, at the time of merger, the bank does or does not intend to convert to a stock institution or a mutual holding company structure;

(6) A clear and conspicuous statement of the merger value of the credit union, the total dollar amount the selected bank merger partner has agreed to pay to effect the merger, and the distribution formula the bank will use to determine each member's portion of that payment to be received upon completion of the merger; and

(7) If the bank plans to add one or more of the credit union's directors to its board or employ one or more senior officials of the credit union, a clear and conspicuous statement that bank could convert to a stock bank in the future and a comparison of the opportunities available to those officials and employees to obtain stock with the opportunities available to the depositors of the bank.

(e)(1) A merging credit union must provide the following disclosures in a clear and conspicuous fashion with the 90-day and 30-day notices it sends to its members regarding the merger:

IMPORTANT REGULATORY DISCLOSURE ABOUT YOUR VOTE

The National Credit Union Administration, the Federal government agency that supervises credit unions, requires [insert name of credit union] to provide the following disclosures:

1. LOSS OF CREDIT UNION MEMBERSHIP. A vote "FOR" the proposed merger means you want your credit union to merge with and become a bank. A vote "AGAINST" the proposed merger means you want your credit union to remain a credit union.

2. [For Mergers into Stock Banks Only]. LOSS OF OWNERSHIP INTERESTS. If your credit union merges into the bank, you will lose all the ownership interests you currently have in the credit union and you will become a customer of the bank. The bank's stockholders own the bank, and the directors of the bank have a fiduciary responsibility to run the bank in the best interests of the stockholders, not the customers.

2. [For Mergers into Mutual Banks Only]. POTENTIAL PROFITS BY OFFICERS AND DIRECTORS. Merger into a mutual savings bank is often the first step in a two-step process to convert to a stock-issuing bank or holding company structure. In such a

scenario, the officers and directors of the bank often profit by obtaining stock in excess of that available to other members.

3. RATES ON LOANS AND SAVINGS. If your credit union merges into the bank, you may experience changes in your loan and savings rates. Available historic data indicates that, for most loan products, credit unions on average charge lower rates than banks. For most savings products, credit unions on average pay higher rates than banks.

(2) This text must be placed in a box, must be the only text on the front side of a single piece of paper, and must be placed so that the member will see the text after reading the credit union's cover letter but before reading any other part of the member notice. The back side of the paper must be blank. A merging credit union may modify this text only with the prior written consent of the Regional Director and, in the case of a state chartered credit union, the appropriate state regulatory agency.

(f) All written communications from a merging credit union to its members regarding the merger must be written in a manner that is simple and easy to understand. Simple and easy to understand means the communications are written in plain language designed to be understood by ordinary consumers and use clear and concise sentences, paragraphs, and sections. For purposes of this part, examples of factors to be considered in determining whether a communication is in plain language and uses clear and concise sentences, paragraphs and sections include the use of short explanatory sentences; use of definite, concrete, everyday words; use of active voice; avoidance of multiple negatives; avoidance of legal and technical business terminology; avoidance of explanations that are imprecise and reasonably subject to different interpretations; and use of language that is not misleading.

(g)(1) A merging credit union must mail or e-mail a requesting member's proper merger-related materials to other members eligible to vote if:

(i) A credit union's board of directors has adopted a proposal to merge;

(ii) A member makes a written request that the credit union mail or e-mail materials for the member;

(iii) The request is received by the credit union no later than 35 days after it sends out the 90-day member notice; and

(iv) The requesting member agrees to reimburse the credit union for the reasonable expenses, excluding overhead, of mailing or e-mailing the materials and also provides the credit union with an appropriate advance payment.

(2) A member's request must indicate if the member wants the materials mailed or e-mailed. If a member requests that the materials be mailed, the credit union will mail the materials to all eligible voters. If a member requests the materials be e-mailed, the credit union will e-mail the materials to all members who have agreed to accept communications electronically from the credit union. The subject line of the credit union's e-mail will be "Proposed Credit Union Merger—Views of Member (insert member name)."

(3)(i) A merging credit union may, at its option, include the following statement with a member's material:

> On (date), the board of directors of (name of merging credit union) adopted a proposal to merge the credit union into a bank. Credit union members who wish to express their opinions about the proposed merger to other members may provide those opinions to (name of credit union). By law, the credit union, at the requesting members' expense, must then send those opinions to the other members. The attached document represents the opinion of a member (or group of members) of this credit union. This opinion is a personal opinion and does not necessarily reflect the views of the management or directors of the credit union.

(ii) A merging credit union may not add anything other than this statement to a member's material without the prior approval of the Regional Director.

(4) The term "proper merger-related materials" does not include materials that:

(i) Due to size or similar reasons are impracticable to mail or e-mail;

(ii) Are false or misleading with respect to any material fact;

(iii) Omit a material fact necessary to make the statements in the material not false or misleading;

(iv) Relate to a personal claim or a personal grievance, or solicit personal gain or business advantage by or on behalf of any party;

(v) Relate to any matter, including a general economic, political, racial, religious, social, or similar cause, that is not significantly related to the proposed merger;

(vi) Directly or indirectly and without expressed factual foundation impugn a person's character, integrity, or reputation;

(vii) Directly or indirectly and without expressed factual foundation make charges concerning improper, illegal, or immoral conduct; or

(viii) Directly or indirectly and without expressed factual foundation make statements impugning the stability and soundness of the credit union.

(5) If a merging credit union believes some or all of a member's request is not proper it must submit the member materials to the Regional Director within seven days of receipt. The credit union must include with its transmittal letter a specific statement of why the materials are not proper and a specific recommendation for how the materials should be modified, if possible, to make them proper. The Regional Director will review the communication, communicate with the requesting member, and respond to the credit union within seven days with a determination on the propriety of the materials. The credit union must then mail or e-mail the material to the members if so directed by NCUA.

(6) A credit union must ensure that its members receive all materials that meet the requirements of § 708a.305(g) on or before the date the members receive the 30-day notice and associated ballot. If a credit union cannot meet this delivery requirement, it must postpone mailing the 30-day notice until it can deliver the member materials. If a credit union postpones the mailing of the 30-day notice, it must also postpone the special meeting by the same number of days. When the credit union has completed the delivery, it must inform the requesting member that the delivery was completed and provide the number of recipients.

(7) The term "appropriate advance payment" means:

(i) For requests to mail materials to all eligible voters, a payment in the amount of 150 percent of the first class postage rate times the number of mailings, and

(ii) For requests to e-mail materials only to members that have agreed to accept electronic communications, a payment in the amount of 200 dollars.

(8) If a credit union posts merger-related information or material on its Web site, then it must simultaneously make a portion of its Web site available free of charge to its members to post and share their opinions on the merger. A link to the portion of the Web site available to members to post their views on the merger must be marked "Members: Share your views on the proposed merger and see other members' views" and the link must also be visible on all pages on which the credit union posts its own merger-related information or material, as well as on the credit union's homepage. If a credit union believes a particular member submission is not proper for posting, it will provide that submission to the Regional Director for review as described in paragraph (g)(5) of this section. The credit union may also post a content-neutral disclaimer using

language similar to the language in paragraph (g)(3)(i) of this section.

(9) A merging credit union must inform members with the 90-day notice that if they wish to provide their opinions about the proposed merger to other members they can submit their opinions in writing to the credit union no later than 35 days from the date of the notice and the credit union will forward those opinions to other members. The 90-day notice will provide a contact at the credit union for delivery of communications, will explain that members must agree to reimburse the credit union's costs of transmitting the communication including providing an advance payment, and will refer members to this section of NCUA's rules for further information about the communication process. The credit union, at its option, may include additional factual information about the communication process with its 90-day notice.

(10) A group of members may make a joint request that the credit union send its materials to other members. For purposes of paragraphs (g)(2) and (g)(3) of this section, the credit union will use the group name provided by the group.

(h) If it chooses, a credit union may seek a preliminary determination from the Regional Director regarding any of the notices required under this subchapter and its proposed methods and procedures applicable to the membership merger vote. The Regional Director will make a preliminary determination regarding the notices and methods and procedures applicable to the membership vote within 30 calendar days of receipt of a credit union's request for review unless the Regional Director extends the period as necessary to request additional information or review a credit union's submission. A credit union's prior submission of any notice or proposed voting procedures does not relieve the credit union of its obligation to certify the results of the membership vote required by § 708a.307 or eliminate the right of the Regional Director to disapprove the merger if the credit union fails to conduct the membership vote in a fair and legal manner consistent with the Federal Credit Union Act and these rules.

§ 708a.306 Membership approval of a proposal to merge.

(a) A proposal for merger approved by a board of directors also requires approval by a majority of the members who vote on the proposal. At least 20 percent of the members eligible to vote must participate in the vote. The credit union must also have NCUA's written authorization to proceed with the member vote.

(b) The board of directors must set a voting record date to determine member voting eligibility. The record date must be at least one day before the publication of notice required in § 708a.303.

(c) A member may vote on a proposal to merge in person at a special meeting held on the date set for the vote or by written ballot delivered by mail or otherwise. The vote on the merger proposal must be by secret ballot and conducted by an independent entity. The independent entity must be a company with experience in conducting corporate elections. No official or senior management official of the credit union or the immediate family members of any official or senior management official may have any ownership interest in or be employed by the independent entity.

§ 708a.307 Certification of vote on merger proposal.

(a) The board of directors of the merging credit union must certify the results of the membership vote to the Regional Director within 10 calendar days after the vote is taken.

(b) The certification must also include a statement that the notice, ballot, and other written materials provided to members were identical to those submitted to NCUA pursuant to § 708a.305. If the board cannot certify this, the board must provide copies of any new or revised materials and an explanation of the reasons for any changes.

(c) The certification must include copies of any correspondence between the credit union and other regulators related to the pending merger.

§ 708a.308 NCUA approval of the merger.

(a) The Regional Director will review the methods by which the membership vote was taken and the procedures applicable to the membership vote. The Regional Director will determine if the notices and other communications to members were accurate, not misleading, and timely; if the membership vote was conducted in a fair and legal manner; and if the credit union has otherwise met the requirements of this subpart, including whether there is substantial evidence that the factors in section 205(c) of the Act are satisfied.

(b) After completion of this review, the Regional Director will approve or disapprove the proposed merger. The Regional Director will issue the approval or disapproval within 30 calendar days of receipt from the credit union of the certification of the result of the membership vote required under § 708a.307, unless the Regional Director extends the period as necessary to request additional information or review the credit union's submission. The Regional Director's approval is conditional on the credit union completing the merger in the timeframes required by § 708a.309.

(c) If the Regional Director disapproves the methods by which the membership vote was taken or the procedures applicable to the membership vote, the Regional Director may direct that a new vote be taken.

(d) A merging credit union may appeal a Regional Director's disapproval to the NCUA Board. The credit union must file the appeal within 30 days after receipt of the Regional Director's determination. The NCUA Board will act on the appeal within 120 days of receipt.

§ 708a.309 Completion of merger.

(a) After receipt of the approvals under §§ 708a.302 and 708a.308 a credit union may complete the merger.

(b) The credit union must complete the merger within one year of the date of NCUA approval under § 708a.308. If a credit union fails to complete the merger within one year the Regional Director will disapprove the merger. The credit union's board of directors must then adopt a new merger proposal and solicit another member vote if it still desires to merge.

(c) The Regional Director may, upon timely request and for good cause, extend the one year completion period for an additional six months.

(d) After notification by the board of directors of the bank that the merger has been completed, the NCUA will cancel the insurance certificate of the credit union and, if applicable, the charter of a Federal credit union.

§ 708a.310 Limits on compensation of officials.

No director or senior management official of an insured credit union may receive any economic benefit in connection with the merger of a credit union other than reasonable compensation and other benefits paid in the ordinary course of business.

§ 708a.311 Voting incentives.

If a merging credit union offers an incentive to encourage members to participate in the vote, including a prize raffle, every reference to such incentive made by the credit union in a written communication to its members must also state that members are eligible for the incentive regardless of whether they vote for or against the proposed merger.

§ 708a.12 Voting guidelines.

A merging credit union must conduct its member vote on merger in a fair and legal manner. NCUA provides the following guidelines as suggestions to help a credit union obtain a fair and legal vote and otherwise fulfill its regulatory obligations. These guidelines are not an exhaustive checklist and do not by themselves guarantee a fair and legal vote.

(a) *Applicability of state law.* While NCUA's merger rules apply to all mergers of federally insured credit unions, federally insured state chartered credit unions (FISCUs) are also subject to state law on mergers. NCUA's position is that no merger of a state chartered credit union is authorized unless permitted by state law, and also that a state legislature or state supervisory authority may impose merger requirements more stringent or restrictive than NCUA's. States that permit mergers may have substantive and procedural requirements that vary from Federal law. For example, there may be different voting standards for approving a vote. While the Federal Credit Union Act requires a simple majority of those who vote to approve a merger, some states have higher voting standards requiring two-thirds or more of those who vote. A FISCU should be careful to understand both Federal and state law to navigate the merger process and conduct a proper vote.

(b) *Eligibility to vote.* (1) Determining who is eligible to cast a ballot is fundamental to any vote. No merger vote can be fair and legal if some members are improperly excluded. A merging credit union should be cautious to identify all eligible members and make certain they are included on its voting list. NCUA recommends that a merging credit union establish internal procedures to manage this task.

(2) A merging credit union should be careful to make certain its member list is accurate and complete. For example, when a credit union converts from paper record keeping to computer record keeping, some member names may not transfer unless the credit union is careful in this regard. This same problem can arise when a credit union merges from one computer system to another where the software is not completely compatible.

(3) Problems with keeping track of who is eligible to vote can also arise when a credit union merges from a Federal charter to a state charter or vice versa. NCUA is aware of an instance where a Federal credit union used membership materials allowing two or more individuals to open a joint account and also allowed each to become a member. The Federal credit union later converted to a state chartered credit union that, like most other state chartered credit unions in its state, used membership materials allowing two or more individuals to open a joint account but only allowed the first person listed on the account to become a member. The other individuals did not become members as a result of their joint account, but were required to open another account where they were the first or only person listed on the account. Over time, some individuals who became members of the Federal credit union as the second person listed on a joint account were treated like those individuals who were listed as the second person on a joint account opened directly with the state chartered credit union. Specifically, both of those groups were treated as non-members not entitled to vote. This example makes the point that a credit union must be diligent in maintaining a reliable membership list.

(c) *Scheduling the special meeting.* NCUA's merger rule requires a merging credit union to permit members to vote by written mail ballot or in person at a special meeting held for the purpose of voting on the merger. Although most members may choose to vote by mail, a significant number may choose to vote in person. As a result, a merging credit union should be careful to conduct its special meeting in a manner conducive to accommodating all members wishing to attend, including selecting a meeting location that can accommodate the anticipated number of attendees and is conveniently located. The meeting should also be held on a day and time suitable to most members' schedules. A credit union should conduct its meeting in accordance with applicable Federal and state law, its bylaws, Robert's Rules of Order or other appropriate parliamentary procedures, and determine before the meeting the nature and scope of any discussion to be permitted.

(d) *Voting incentives.* Some credit unions may wish to offer incentives to members, such as entry to a prize raffle, to encourage participation in the merger vote. The credit union must exercise care in the design and execution of such incentives.

(1) The credit union should ensure that the incentive complies with all applicable state, Federal, and local laws.

(2) The incentive should not be unreasonable in size. The cost of the incentive should have a negligible impact on the credit union's net worth ratio and the incentive should not be so large that it distracts the member from the purpose of the vote. If the board desires to use such incentives, the cost of the incentive should be included in the directors' deliberation and determination that the merger is in the best interests of the credit union's members.

(3) The credit union should ensure that the incentive is available to every member that votes regardless of how or when he or she votes. All of the credit union's written materials promoting the incentive to the membership must disclose to the members, as required by § 708a.311 of this part, that they have an equal opportunity to participate in the incentive program regardless of whether they vote for or against the merger. The credit union should also design its incentives so that they are available equally to all members who vote, regardless of whether they vote by mail or in person at the special meeting.

PART 708b—MERGERS OF FEDERALLY INSURED CREDIT UNIONS; VOLUNTARY TERMINATION OR CONVERSION OF INSURED STATUS

15. The authority citation for part 708b continues to read as follows:

Authority: 12 U.S.C. 1752(7), 1766, 1785, 1786, 1789.

16. Amend § 708b.2 by removing alphabetical paragraph designations (a) through (k) and adding definitions of "conducted by an independent entity," "merger-related financial arrangement," "secret ballot" and "senior management official" in alphabetical order to read as follows:

§ 708b.2 Definitions

* * * * *

Conducted by an independent entity means:

(1) The independent entity will receive the ballots directly from voting members and store them.

(2) After the conclusion of the special meeting that ends the ballot period, the independent entity will open all the ballots in its possession and tabulate the results. The entity must not open or tabulate any ballots before the conclusion of the special meeting.

(3) The independent entity will certify the final vote tally in writing to the credit union and provide a copy to the NCUA Regional Director. The certification will include, at a minimum, the number of members who voted, the number of affirmative votes, and the number of negative votes. During the course of the voting period the independent entity may provide the credit union with the names of members who have not yet voted, but may not provide any voting results to the credit

union prior to certifying the final vote tally.

* * * * *

Merger-related financial arrangement means a material increase in compensation (including indirect compensation, for example, bonuses, deferred compensation, or other financial rewards) or benefits that any board member or senior management official of a merging credit union may receive in connection with a merger transaction. For purposes of this definition, a material increase is an increase that exceeds the greater of 15 percent or $10,000.

* * * * *

Secret ballot means no credit union employee or official can determine how a particular member voted. Credit union employees and officials are prohibited from assisting members in completing ballots or handling completed ballots.

Senior management official means the chief executive officer (who may hold the title of president or treasurer/manager), any assistant chief executive officer, and the chief financial officer.

* * * * *

17–18. Amend § 708b.103 by revising paragraph (a)(5), redesignating paragraphs (a)(7) through (10) as paragraphs (a)(8) through (11), and adding new paragraph (a)(7) to read as follows:

§ 708b.103 Preparation of merger plan.

(a) * * *

(5) Explanation of any proposed share adjustments, and where the net worth ratio of the merging credit union is more than 500 basis points higher than the net worth ratio of the continuing credit union, an explanation of the factors considered in establishing the amount of any proposed adjustment or in determining no adjustment is necessary;

* * * * *

(7) Description of any merger-related financial arrangement, as defined in § 708b.2;

* * * * *

19. Revise paragraph (a)(8) of § 708b.104 to read as follows:

§ 708b.104 Submission of merger proposal to the NCUA.

(a) * * *

(8) If the merging credit union's assets on its latest call report are equal to or greater than the threshold amount established annually by the Federal Trade Commission under 15 U.S.C. 18a(a)(2)(B)(i), currently $63.4 million, a statement about whether the two credit unions intend to make a Hart-Scott-Rodino Act premerger notification filing with the Federal Trade Commission and, if not, an explanation why not; and

* * * * *

20. Revise paragraph (a)(2)(ii) of § 708b.106 to read as follows:

§ 708b.106 Approval of the merger proposal by members.

(a) * * *

(2) * * *

(ii) Contain a summary of the merger plan, including, but not necessarily limited to, current financial statements for each credit union, a consolidated financial statement for the continuing credit union, analyses of share values, explanation of any proposed share adjustments, explanation of any changes relative to insurance such as life savings and loan protection insurance and insurance of member accounts, and a detailed description of any merger related financial arrangement, as defined in § 708b.2. The description must include the name and title of each individual recipient and an explanation of the financial impact of each element of the arrangement, including direct salary increases and any indirect compensation, such as any bonus, deferred compensation or other financial reward;

* * * * *

§ 708b.107 [Amended]

21. Amend the heading to § 708b.107 by removing the word "Certificate" and adding the word "Certification" in its place.

22. Revise paragraph (c) of § 708b.201 to read as follows:

§ 708b.201 Termination of insurance.

* * * * *

(c) A majority of the credit union's members must approve a termination of insurance by affirmative vote. The vote must be taken by secret ballot and conducted by an independent entity.

* * * * *

23. Revise paragraphs (d) and (g) of § 708b.203 to read as follows:

§ 708b.203 Conversion of insurance.

* * * * *

(d) Approval of a conversion of Federal to nonfederal insurance requires the affirmative vote of a majority of the credit union's members who vote on the proposition, provided at least 20 percent of the total membership participates in the voting. The vote must be taken by secret ballot and conducted by an independent entity.

* * * * *

(g) Generally, the NCUA will conditionally approve or disapprove the conversion in writing within 14 days after receiving the certification of the vote. The credit union must complete the conversion within six months of the date of conditional approval. If a credit union fails to complete the conversion within six months the Regional Director will disapprove the conversion. The credit union's board of directors, if it still wishes to convert, must then adopt a new conversion proposal and solicit another member vote.

* * * * *

24. Revise paragraph (b) of § 708b.206 to read as follows:

§ 708b.206 Share insurance communications to members.

* * * * *

(b) Every share insurance communication about share insurance conversion must contain the following conspicuous statement: "IF YOU ARE A MEMBER OF THIS CREDIT UNION, YOUR ACCOUNTS ARE CURRENTLY INSURED BY THE NATIONAL CREDIT UNION ADMINISTRATION, A FEDERAL AGENCY. THIS FEDERAL INSURANCE IS BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES GOVERNMENT. IF THE CREDIT UNION CONVERTS TO PRIVATE INSURANCE WITH (insert name of private share insurer) AND THE CREDIT UNION FAILS, THE FEDERAL GOVERNMENT DOES NOT GUARANTEE THAT YOU WILL GET YOUR MONEY BACK." The statement must:

(1) Appear on the first page of the communication where conversion is discussed and, if the communication is on an Internet Web site posting, the credit union must make reasonable efforts to make it visible without scrolling; and

(2) Must be in capital letters, bolded, offset from the other text by use of a border, and at least one font size larger than any other text (exclusive of headings) used in the communication.

* * * * *

Note: The following revision to a document entitled "Corporate Federal Credit Union Bylaws," will not appear in the Code of Federal Regulations.

Section 4 of Article XI of the document entitled "Corporate Federal Credit Union Bylaws," is revised to read as follows:

Article XI. General

* * * * *

Section 4. (a) Subject to the limitations in 12 CFR 701.33(c)(5) of the NCUA regulations, the corporate credit union may elect to indemnify to the extent authorized by (check one) ( ) law of the state of ____ or ( ) Model Business Corporation Act the following

individuals from any liability asserted against them and expenses reasonably incurred by them in connection with judicial or administrative proceedings to which they are or may become parties by reason of the performance of their official duties: (Check as appropriate)
( ) current officials, ( ) former officials,
( ) current employees, ( ) former employees.

(b) The corporate credit union may purchase and maintain insurance on behalf of the individuals indicated in (a) above against any liability asserted against them and expenses reasonably incurred by them in their official capacities and arising out of the performance of their official duties to the extent such insurance is permitted by the applicable state law or the Model Business Corporation Act.

(c) The term "official" in this bylaw means a person who is a member of the board of directors, supervisory committee, other volunteer committee (including elected or appointed loan officers or membership officers), established by the board of directors.

* * * * *

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Federal Register

Monday,
March 29, 2010

Part IV

The President

Executive Order 13535—Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act

Federal Register
Vol. 75, No. 59
Monday, March 29, 2010

Presidential Documents

Title3—

The President

Executive Order 13535 of March 24, 2010

Ensuring Enforcement and Implementation of Abortion Restrictions in the Patient Protection and Affordable Care Act

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the "Patient Protection and Affordable Care Act" (Public Law 111–148), I hereby order as follows:

Section. 1. *Policy.* Following the recent enactment of the Patient Protection and Affordable Care Act (the "Act"), it is necessary to establish an adequate enforcement mechanism to ensure that Federal funds are not used for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), consistent with a longstanding Federal statutory restriction that is commonly known as the Hyde Amendment. The purpose of this order is to establish a comprehensive, Government-wide set of policies and procedures to achieve this goal and to make certain that all relevant actors—Federal officials, State officials (including insurance regulators) and health care providers—are aware of their responsibilities, new and old.

The Act maintains current Hyde Amendment restrictions governing abortion policy and extends those restrictions to the newly created health insurance exchanges. Under the Act, longstanding Federal laws to protect conscience (such as the Church Amendment, 42 U.S.C. 300a–7, and the Weldon Amendment, section 508(d)(1) of Public Law 111–8) remain intact and new protections prohibit discrimination against health care facilities and health care providers because of an unwillingness to provide, pay for, provide coverage of, or refer for abortions.

Numerous executive agencies have a role in ensuring that these restrictions are enforced, including the Department of Health and Human Services (HHS), the Office of Management and Budget (OMB), and the Office of Personnel Management.

Sec. 2. *Strict Compliance with Prohibitions on Abortion Funding in Health Insurance Exchanges.* The Act specifically prohibits the use of tax credits and cost-sharing reduction payments to pay for abortion services (except in cases of rape or incest, or when the life of the woman would be endangered) in the health insurance exchanges that will be operational in 2014. The Act also imposes strict payment and accounting requirements to ensure that Federal funds are not used for abortion services in exchange plans (except in cases of rape or incest, or when the life of the woman would be endangered) and requires State health insurance commissioners to ensure that exchange plan funds are segregated by insurance companies in accordance with generally accepted accounting principles, OMB funds management circulars, and accounting guidance provided by the Government Accountability Office.

I hereby direct the Director of the OMB and the Secretary of HHS to develop, within 180 days of the date of this order, a model set of segregation guidelines for State health insurance commissioners to use when determining whether exchange plans are complying with the Act's segregation requirements, established in section 1303 of the Act, for enrollees receiving Federal financial assistance. The guidelines shall also offer technical information that States should follow to conduct independent regular audits of insurance companies that participate in the health insurance exchanges. In developing these model guidelines, the Director of the OMB and the Secretary of HHS shall consult with executive agencies and offices that have relevant expertise in accounting

principles, including, but not limited to, the Department of the Treasury, and with the Government Accountability Office. Upon completion of those model guidelines, the Secretary of HHS should promptly initiate a rulemaking to issue regulations, which will have the force of law, to interpret the Act's segregation requirements, and shall provide guidance to State health insurance commissioners on how to comply with the model guidelines.

Sec. 3. *Community Health Center Program.* The Act establishes a new Community Health Center (CHC) Fund within HHS, which provides additional Federal funds for the community health center program. Existing law prohibits these centers from using Federal funds to provide abortion services (except in cases of rape or incest, or when the life of the woman would be endangered), as a result of both the Hyde Amendment and longstanding regulations containing the Hyde language. Under the Act, the Hyde language shall apply to the authorization and appropriations of funds for Community Health Centers under section 10503 and all other relevant provisions. I hereby direct the Secretary of HHS to ensure that program administrators and recipients of Federal funds are aware of and comply with the limitations on abortion services imposed on CHCs by existing law. Such actions should include, but are not limited to, updating Grant Policy Statements that accompany CHC grants and issuing new interpretive rules.

Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect: (i) authority granted by law or Presidential directive to an agency, or the head thereof; or (ii) functions of the Director of the OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees or agents, or any other person.

THE WHITE HOUSE,
Washington, March 24, 2010.

[FR Doc. 2010–7154
Filed 3–26–10; 1:00 pm]

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