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

WHEN: Tuesday, June 9, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 74, No. 100

Wednesday, May 27, 2009

Agriculture Department
See Forest Service
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25214

Centers for Disease Control and Prevention
NOTICES
Meetings:
National Center for Injury Prevention and Control Initial Review Group, 25263
National Center for Injury Prevention and Control Initial Review Group; Correction, 25263

Children and Families Administration
RULES
Temporary Assistance for Needy Families Carry–over Funds, 25161–25163

Commerce Department
See International Trade Administration
See National Institute of Standards and Technology

Consumer Product Safety Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25220–25221

Education Department
NOTICES
Applications:
Teacher Quality Partnership Grants Program, 25221–25234

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Pesticide Tolerances:
Etoxazole, 25156–25161
Approval and Promulgation of Air Quality Implementation Plans:
California; Determination of Attainment of the 1-Hour Ozone Standard for the Ventura County Area, 25153–25156
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
California; Finding of Attainment of the 1-Hour Ozone Standard for the Ventura County Area, 25200
Meetings:
Definition of Solid Waste Public Meeting, 25200–25205
Standards of Performance for Coal Preparation and Processing Plants, 25304–25327
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25236–25237
Request to Voluntarily Amend a Pesticide Registration to Terminate a Use:
Ethoprop, 25237–25239

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Establishment of Class D Airspace and Modification of Class E Airspace:
Bunnell, FL, 25145–25146
NOTICES
Petitions for Exemption; Summary of Petitions Received, 25300

Federal Communications Commission
RULES
Promoting Diversification of Ownership In the Broadcasting Services, 25163–25168
Radio Broadcasting Services:
Mineral and Nevada City, CA, 25169
PROPOSED RULES
Promoting Diversification of Ownership in the Broadcasting Services, 25205–25208
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25239–25240

Federal Energy Regulatory Commission
NOTICES
Dismissed Pleading:
Placer County Water Agency, 25234
Filings:
PJM Interconnection L.L.C., 25234–25235
Ripon Cogeneration, LLC, 25234
Meetings:
ORPC Alaska, LLC, 25235

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 25240

Federal Railroad Administration
RULES
Amendments Updating the Address for the Federal Railroad Administration and Reflecting the Migration to the Federal Docket Management System, 25169–25176
Hours of Service of Railroad Employees; Amended Recordkeeping and Reporting Regulations, 25330–25352
PROPOSED RULES
Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions, 25208–25209

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25240–25241
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 25241
Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities, 25241

Fish and Wildlife Service
PROPOSED RULES
Migratory Bird Hunting:
Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2009–10 Hunting Season; Meetings, 25209–25213

Food and Drug Administration
RULES
Implantation or Injectable Dosage Form New Animal Drugs:
Luprostiol, 25146–25147
NOTICES
Draft Guidance for Industry:
Presenting Risk Information in Prescription Drug and Medical Device Promotion; Availability, 25245–25246

Forest Service
NOTICES
Meetings:
Land Between The Lakes Advisory Board, 25215

Geological Survey
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25273–25274

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Indian Health Service
See National Institutes of Health
NOTICES
Meetings:
NTP Board of Scientific Counselors, 25241–25244

Homeland Security Department
See U.S. Customs and Border Protection

Indian Health Service
NOTICES
Tribal Self-Governance Programs:
Negotiation Cooperative Agreement, 25267–25271
Planning Cooperative Agreement, 25264–25267

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Land Management Bureau
See Minerals Management Service
See National Park Service

Internal Revenue Service
RULES
Guidance Necessary to Facilitate Business Election Filing:
Finalization of Controlled Group Qualification Rules, 25147–25153
PROPOSED RULES
Tax Avoidance Transactions; Hearing Cancellation, 25177

International Trade Administration
NOTICES
Antidumping:
Chlorinated Isocyanurates from Spain, 25215–25220

International Trade Commission
NOTICES
Investigations:
Gray Portland Cement and Cement Clinker from Mexico, 25281

Justice Department
NOTICES
Consent Decrees:
In re James Pielet and In re J.P. Investments, Inc., 25281
MI Metals, Inc., 25281–25282

Land Management Bureau
NOTICES
Direct Sale of Public Land:
Lander County, NV, 25274–25275
Public Land Order:
Withdrawal of Public Land for Emerald Mountain Recreation Management Area; CO, 25279–25281

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

Minerals Management Service
PROPOSED RULES
Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf, 25177–25200

National Aeronautics and Space Administration
NOTICES
Centennial Challenges—2009 Lunar Lander Challenge, 25282

National Institute of Standards and Technology
NOTICES
Meetings:
Judges Panel of the Malcolm Baldrige National Quality Award, 25220

National Institutes of Health
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25244–25245
Meetings:
Center for Scientific Review, 25249, 25251–25254, 25256–25260
Eunice Kennedy Shriver National Institute of Child Health and Human Development, 25246–25247, 25250–25251, 25260
National Cancer Institute, 25247–25248, 25261
National Center for Complementary and Alternative Medicine, 25260–25261
National Center for Research Resources, 25262
National Heart, Lung, and Blood Institute, 25254–25255
National Institute of Dental and Craniofacial Research, 25250, 25262–25263
National Institute of Diabetes and Digestive and Kidney Diseases, 25255–25256, 25261–25262
National Institute of General Medical Sciences, 25248–25250
National Institute of Mental Health, 25247
National Institute on Aging, 25263–25264
Office of Biotechnology Activities, Office of Science Policy, Office of the Director, 25255
Recombinant DNA Advisory Committee, 25248

National Park Service
NOTICES
Intent to Repatriate Cultural Items:
Maryhill Museum of Art, Goldendale, WA; Correction, 25276
U.S. Department of the Interior, National Park Service, Hawaii Volcanoes National Park, Hawaii National Park, HI; Correction, 25275–25276
Inventory Completion:
California State Department of Transportation, Sacramento, CA and San Diego State University, San Diego, CA, 25278–25279
Field Museum of Natural History, Chicago, IL, 25276–25277
Native American Human Remains and Associated Funerary Objects in the Control of Gila Cliff Dwellings National Monument, Silver City, NM; Correction, 25277–25278
U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK, 25277

Nuclear Regulatory Commission
NOTICES
Establishment of Atomic Safety and Licensing Board:
Detroit Edison Co., Fermi Power Plant; Correction, 25282–25283
Meetings; Sunshine Act, 25283
NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and New Jersey, 25283–25287
Order Imposing Civil Monetary Penalty:
Precision Calibration & Testing Corp., York, PA, 25287–25289

Presidential Documents
PROCLAMATIONS
Special Observances:
Prayer for Peace, Memorial Day (Proc. 8385), 25381–25384

Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25214–25215

Securities and Exchange Commission
PROPOSED RULES
Custody of Funds or Securities of Clients by Investment Advisers, 25354–25380
NOTICES
Applications:
Main Street Capital Corporation, et al., 25290–25291
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 25293–25294
International Securities Exchange, LLC, 25296–25297
NYSE Arca, Inc., 25291–25295

Small Business Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25289–25290
Disaster Declarations:
North Dakota, 25290

State Department
NOTICES
Meetings:
Overseas Schools Advisory Council, 25298
Shipping Coordinating Committee, 25297–25298

Surface Transportation Board
NOTICES
Public Hearing:
Twenty-Five Years of Rail Banking; A Review and Look Ahead, 25301

Susquehanna River Basin Commission
NOTICES
Public Hearing and Commission Meeting, 25298–25300

Transportation Department
See Federal Aviation Administration
See Federal Railroad Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

U.S. Customs and Border Protection
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25271–25273

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 25302

Separate Parts In This Issue

Part II
Environmental Protection Agency, 25304–25327

Part III
Transportation Department, Federal Railroad Administration, 25330–25352

Part IV
Securities and Exchange Commission, 25354–25380

Part V
Presidential Documents, 25381–25384

Reader Aids

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

14 CFR
71 25145

17 CFR
Proposed Rules:
275 25354
279 25354

21 CFR
522 25146

26 CFR
1 25147
Proposed Rules:
301 25177

30 CFR
Proposed Rules:
250 25177
256 25177
260 25177

40 CFR
52 25153
180 25156
Proposed Rules:
52 25200
60 25304
260 25200
261 25200

45 CFR
286 25161

47 CFR
73 (2 documents) 25163, 25169
74 25163
Proposed Rules:
73 25205

49 CFR
200 25169
201 25169
209 25169
211 25169
212 25169
214 25169
215 25169
216 25169
219 25169
221 25169
224 25169
227 25169
228 (2 documents) 25169, 25330
229 25169
230 25169
232 25169
235 25169
236 25169
238 25169
239 25169
240 25169
241 25169
244 25169
245 25169
256 25169
260 25169
268 25169
Proposed Rules:
240 25208

50 CFR
Proposed Rules:
20 25209

Rules and Regulations

Federal Register

Vol. 74, No. 100

Wednesday, May 27, 2009

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0327; Airspace Docket 09–ASO–014]

Establishment of Class D Airspace, Modification of Class E Airspace; Bunnell, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, request for comments.

SUMMARY: This action establishes Class D airspace and modifies Class E airspace at Flagler County Airport in Bunnell, FL. A new Federal Contract Air Traffic Control Tower is being built for Flagler County Airport. Class D Surface airspace is required to be established and after evaluation the existing Class E airspace will be modified to facilitate a more efficient operation. This rule increases the safety and management of the National Airspace System (NAS) around Flagler County Airport.

DATES: Effective 0901 UTC, August 27, 2009. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments. Comments should be received no later that June 26, 2009.

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–2009–0327; Airspace Docket No. 09–ASO–014, at the beginning of your comments. You may also submit and review received comments through the Internet at *http://www.regulations.gov.*

You may review the public docket containing the rule, 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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Avenue, College Park, Georgia 30337.

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

SUPPLEMENTARY INFORMATION:

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments, and, therefore, issues it as a direct final rule. The FAA has determined that this rule only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Unless a written adverse or negative comment or a written notice of intent to submit and adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the effective date. If the FAA receives, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a direct final rule and was not preceded by a notice of proposed rulemaking, interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. An electronic copy of this document may be downloaded from and comments may be submitted and reviewed 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/.* Communications should identify both docket numbers and be submitted in triplicate to the address specified under the caption **ADDRESSES** above or through the Web site. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. Those wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0327; Airspace Docket No. 09–ASO–014.'' The postcard will be date stamped and returned to the commenter.

The Rule

This amendment to Title 14 of the Code of Federal Regulations (14 CFR) part 71 establishes Class D airspace around the Flagler County Airport, which extends upward from the surface of the Earth to and including 1,500 feet MSL within a 4.0-mile radius of the Airport. Additionally, the existing Class E airspace that extends upwards from 700 feet above the surface of the Earth (E5) will have its dimensions increased from a 6.4-mile radius to a 6.5-mile radius of the Flagler County Airport.

Class D and Class E airspace designations are published in paragraphs 5000 and 6005 respectively

of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order.

Agency Findings

The regulations adopted herein 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 various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class D and modifies Class E airspace at Flagler County Airport in Bunnell, FL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

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

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 5000 Class D Airspace

* * * * *

ASO FL D Bunnell, FL [New]

Flagler County Airport, Bunnell, FL
(Lat. 29°28′03″ N, long. 81°12′23″ W)

That airspace extending upward from the surface of the Earth, to and including 1,500 feet MSL, within a 4.0-mile radius of the Flagler County Airport. This Class D airspace area is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E Airspace Extending Upward from 700 feet or more above the Surface of the Earth.

* * * * *

ASO FL E5 Bunnell, FL [Revised]

Flagler County Airport, Bunnell, FL
(Lat. 29°28′03″ N, long. 81°12′23″ W)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Flagler County Airport.

* * * * *

Issued in College Park, Georgia, on May 11, 2009.

Barry A. Knight,

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

[FR Doc. E9–12028 Filed 5–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

[Docket No. FDA–2009–N–0665]

Implantation or Injectable Dosage Form New Animal Drugs; Change of Sponsor; Luprostiol

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for luprostiol injectable solution from Intervet, Inc., to Virbac AH, Inc.

DATES: This rule is effective May 27, 2009.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8307, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Intervet Inc., P.O. Box 318, 29160 Intervet Lane, Millsboro, DE 19966, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 140–857 for EQUESTROLIN (luprostiol) injectable solution to Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137. Accordingly, the regulations are amended in 21 CFR 522.1290 to reflect the change of sponsorship and a current format.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. In § 522.1290, revise the section heading and paragraphs (a), (b), and (d) to read as follows:

§ 522.1290 Luprostiol.

(a) *Specifications*. Each milliliter of solution contains 7.5 milligrams (mg) luprostiol.

(b) *Sponsor*. See No. 051311 in § 510.600(c) of this chapter.

* * * * *

(d) *Conditions of use in horses*—(1) *Amount*. 7.5 mg by intramuscular injection.

(2) Indications for use. For estrus control and termination of pregnancy in mares.

(3) *Limitations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian. Do not use in horses intended for human consumption.

Dated: May 12, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–12269 Filed 5–26–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9451]

RIN 1545–BF25

Guidance Necessary To Facilitate Business Election Filing; Finalization of Controlled Group Qualification Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation and removal of temporary regulation.

SUMMARY: This document contains a final regulation that provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations. This regulation is being published to replace an expiring temporary regulation.

DATES: *Effective Date:* This regulation is effective on May 27, 2009.

Applicability Date: Section 1.1563–1T(c)(2)(i)–(iii) expired on May 26, 2009, pursuant to section 7805(e)(2) and § 1.1563–1T(e)(2). In accordance with section 7805(b)(1)(B), this regulation applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this regulation to taxable years beginning before May 26, 2009. *See* § 1.1563–1(e).

FOR FURTHER INFORMATION CONTACT: Grid Glyer, (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this final regulation has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–2019.

This collection of information is in § 1.1563–1(c)(2). This information is required if a taxpayer or taxpayers could be a member of more than one brother-sister controlled group and does not elect which group to be a member of. In that case, the IRS would designate a group.

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 control number by the Office of Management and Budget.

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

Background and Explanation of Provisions

On December 22, 2006, the IRS and the Treasury Department published several temporary regulations, including § 1.1563–1T. *See* TD 9304 (71 FR 76904), 2007–1 CB 423. Also on December 22, 2006, the IRS and the Treasury Department issued a notice of proposed rulemaking cross-referencing those temporary regulations. *See* REG–161919–05 (71 FR 76955), 2007–1 CB 463. Section 1.1563–1T was also amended by the publication of a temporary regulation on December 26, 2007. *See* TD 9369 (72 FR 72929), 2008–6 IRB 394. Also on December 26, 2007, the IRS and Treasury Department issued a notice of proposed rulemaking cross-referencing that temporary regulation. *See* REG–104713–07 (72 FR 72970), 2008–6 IRB 409.

Section 1.1563–1T republished § 1.1563–1 to conform it to current formatting conventions. It was not intended that any such reformatting constitute a substantive change. *See* § 3.A of the preamble to TD 9304. Treasury decision 9304 also removed § 1.1563–1. Section 1.1563–1T provides guidance to taxpayers for determining which corporations are included in a controlled group of corporations.

This Treasury decision adopts the proposed regulation § 1.1563–1 with no substantive changes. In addition, this Treasury decision removes the corresponding temporary regulation, § 1.1563–1T.

This Treasury decision does not adopt the other proposed regulations that were published as part of TD 9304. Those proposed regulations are now found in REG–113688–09, and their status will be addressed at a later date.

The IRS and the Treasury Department received no written or electronic comments from the public in response to the notice of proposed rulemaking and no public hearing was requested or held.

Special Analysis

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to this regulation. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this regulation primarily affects large corporations (which are members of either controlled or consolidated groups). Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of this regulation is Grid Glyer, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in its development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulation

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for § 1.1563–1T to read in part as follows:

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

■ **Par. 2.** Section 1.1563–1 is added to read as follows:

§ 1.1563–1 Definition of controlled group of corporations and component members and related concepts.

(a) *Controlled group of corporations*—(1) *In general*—(i) *Types of controlled groups.* For purposes of sections 1561 through 1563, the term *controlled group of corporations* means any group of corporations which is—

(A) A *parent-subsidiary controlled group* (as defined in paragraph (a)(2) of this section);

(B) A *brother-sister controlled group* (as defined in paragraph (a)(3)(i) of this section);

(C) A *combined group* (as defined in paragraph (a)(4) of this section); or

(D) A *life insurance controlled group* (as defined in paragraph (a)(5) of this section).

(ii) *Cross reference.* For the exclusion of certain stock for purposes of applying the definitions contained in this paragraph, see section 1563(c) and § 1.1563–2.

(2) *Parent-subsidiary controlled group*—(i) *Definition.* The term *parent-subsidiary controlled group* means one or more chains of corporations connected through stock ownership with a common parent corporation if—

(A) Stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each of the corporations, except the common parent corporation, is owned (directly and with the application of § 1.1563–3(b)(1), relating to options) by one or more of the other corporations; and

(B) The common parent corporation owns (directly and with the application of § 1.1563–3(b)(1), relating to options) stock possessing at least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of at least one of the other corporations, excluding, in computing such voting power or value, stock owned directly by such other corporations.

(ii) *Examples.* The definition of a parent-subsidiary controlled group of corporations may be illustrated by the following examples:

Example 1. P Corporation owns stock possessing 80 percent of the total combined voting power of all classes of stock entitled to vote of S Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P and S.

Example 2. Assume the same facts as in *Example 1.* Assume further that S owns stock possessing 80 percent of the total value of shares of all classes of stock of X Corporation. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, and X. The result would be the same if P, rather than S, owned the X stock.

Example 3. P Corporation owns 80 percent of the only class of stock of S Corporation and S, in turn, owns 40 percent of the only class of stock of X Corporation. P also owns 80 percent of the only class of stock of Y Corporation and Y, in turn, owns 40 percent of the only class of stock of X. P is the common parent of a parent-subsidiary controlled group consisting of member corporations P, S, X, and Y.

Example 4. P Corporation owns 75 percent of the only class of stock of Y and Z Corporations; Y owns all the remaining stock of Z; and Z owns all the remaining stock of Y. Since intercompany stockholdings are excluded (that is, are not treated as outstanding) for purposes of determining whether P owns stock possessing at least 80 percent of the voting power or value of at least one of the other corporations, P is treated as the owner of stock possessing 100 percent of the voting power and value of Y and of Z for purposes of paragraph (a)(2)(i)(B) of this section. Also, stock possessing 100 percent of the voting power and value of Y and Z is owned by the other corporations in the group within the meaning of paragraph (a)(2)(i)(A) of this section. (P and Y together own stock possessing 100 percent of the voting power and value of Z, and P and Z together own stock possessing 100 percent of the voting power and value of Y.) Therefore, P is the common parent of a parent-subsidiary controlled group of corporations consisting of member corporations P, Y, and Z.

(3) *Brother-sister controlled group*—(i) *Definition.* The term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563–3(b)) stock possessing more than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation.

(ii) *Additional stock ownership requirement for purposes of certain other provisions of law.* For purposes of any provision of law (other than sections 1561 through 1563) that incorporates the section 1563(a) definition of a controlled group, the term *brother-sister controlled group* means two or more corporations if the same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of the rules contained in § 1.1563–3(b)) stock possessing—

(A) At least 80 percent of the total combined voting power of all classes of stock entitled to vote or at least 80 percent of the total value of shares of all classes of stock of each corporation (the 80 percent requirement);

(B) More than 50 percent of the total combined voting power of all classes of stock entitled to vote or more than 50 percent of the total value of shares of all classes of stock of each corporation, taking into account the stock ownership of each such person only to the extent such stock ownership is identical with respect to each such corporation (the more-than-50 percent identical ownership requirement); and

(C) The five or fewer persons whose stock ownership is considered for purposes of the 80 percent requirement must be the same persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

(iii) *Examples.* The principles of paragraph (a)(3)(ii) of this section may be illustrated by the following examples:

Example 1. (i) The outstanding stock of corporations P, W, X, Y, and Z, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	P (%)	W (%)	X (%)	Y (%)	Z (%)	Identical ownership
A	55	51	55	55	55	51.
B	45	49				(45% in P and W).
C			45			
D				45		
E					45	
Total	100	100	100	100	100	

(ii) Corporations P and W are members of a brother-sister controlled group of corporations. Although the more-than-50 percent identical ownership requirement is met for all 5 corporations, corporations X, Y, and Z are not members because at least 80 percent of the stock of each of those corporations is not owned by the same 5 or fewer persons whose stock ownership is considered for purposes of the more-than-50 percent identical ownership requirement.

Example 2. (i) The outstanding stock of corporations X and Y, which have only one class of stock outstanding, is owned by the following unrelated individuals:

Individuals	Corporations	
	X (%)	Y (%)
A	12	12
B	12	12
C	12	12
D	12	12
E	13	13
F	13	13
G	13	13
H	13	13
Total	100	100

(ii) Any group of five of the shareholders will own more than 50 percent of the stock in each corporation, in identical holdings. However, X and Y are not members of a brother-sister controlled group because at least 80 percent of the stock of each corporation is not owned by the same five or fewer persons.

Example 3. (i) Corporation X and Y each have two classes of stock outstanding, voting common and non-voting common. (None of this stock is excluded from the definition of stock under section 1563(c).) Unrelated individuals A and B own the following percentages of the class of stock entitled to vote (voting) and of the total value of shares of all classes of stock (value) in each of corporations X and Y:

Individuals	Corporations	
	X	Y
A	100% voting; 60% value	75% voting; 60% value.
B	0% voting; 10% value	25% voting; 10% value.

(ii) No other shareholder of X owns (or is considered to own) any stock in Y. X and Y are a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A and B own more than 50 percent of the total value of shares of all classes of stock of X and Y in identical holdings. (The group also meets the more-than-50 percent identical ownership requirement because of A's voting stock ownership.) The group meets the 80 percent requirement because A and B own at least 80 percent of the total combined voting power of all classes of stock entitled to vote.

Example 4. Assume the same facts as in *Example 3* except that the value of the stock owned by A and B is not more than 50 percent of the total value of shares of all classes of stock of each corporation in identical holdings. X and Y are not a brother-sister controlled group of corporations. The group meets the more-than-50 percent identical ownership requirement because A owns more than 50 percent of the total combined voting power of the voting stock of each corporation. For purposes of the 80 percent requirement, B's voting stock in Y cannot be combined with A's voting stock in Y since B, who does not own any voting stock in X, is not a person whose ownership is considered for purposes of the more-than-50 percent identical ownership requirement. Because no other shareholder owns stock in both X and Y, these other shareholders' stock ownership is not counted towards meeting either the more-than-50 percent identical ownership requirement or the 80 percent ownership requirement.

(iv) *Special rule if prior law applies.* Paragraph (a)(3)(ii) of this section, as amended by TD 8179, applies to taxable years ending on or after December 31, 1970. See, however, the transitional rule in paragraph (d) of this section.

(4) *Combined group*—(i) *Definition.* The term *combined group* means any group of three or more corporations if—

(A) Each such corporation is a member of either a parent-subsidiary controlled group of corporations or a brother-sister controlled group of corporations; and

(B) At least one of such corporations is the common parent of a parent-subsidiary controlled group and also is a member of a brother-sister controlled group.

(ii) *Examples.* The definition of a combined group of corporations may be illustrated by the following examples:

Example 1. A, an individual, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporations X and Y. Y, in turn, owns stock possessing 80 percent of the total combined voting power of all classes of the stock of corporation Z. X, Y, and Z are members of the same combined group since—

(i) X, Y, and Z are each members of either a parent-subsidiary or brother-sister controlled group of corporations; and

(ii) Y is the common parent of a parent-subsidiary controlled group of corporations consisting of Y and Z, and also is a member of a brother-sister controlled group of corporations consisting of X and Y.

Example 2. Assume the same facts as in *Example 1,* and further assume that corporation X owns 80 percent of the total value of shares of all classes of stock of corporation S. X, Y, Z, and S are members of the same combined group.

(5) *Life insurance controlled group*—(i) *Definition.* The term *life insurance controlled group* means two or more life insurance companies each of which is a member of a controlled group of corporations described in paragraph (a)(2), (a)(3)(i), or (a)(4) of this section and to which § 1.1502–47(f)(6) does not apply. Such insurance companies shall be treated as a controlled group of corporations separate from any other corporations which are members of a controlled group described in such paragraph (a)(2), (a)(3)(i), or (a)(4) of this section. For purposes of this section, the common parent of the controlled group described in paragraph (a)(2) of this section shall be referred to as the common parent of the life insurance controlled group.

(ii) *Examples.* The following examples illustrate the definition of a *life insurance controlled group.* In these examples, L indicates a life company, another letter indicates a nonlife company and each corporation uses the calendar year as its taxable year:

Example 1. Since January 1, 1999, corporation P has owned all the stock of corporations L_1 and Y, and L_1 has owned all the stock of corporation X. On January 1, 2005, Y acquired all of the stock of corporation L_2. Since L_1 and L_2 are members of a parent-subsidiary controlled group of corporations, such companies are treated as members of a life insurance controlled group separate from the parent-subsidiary controlled group consisting of P, X and Y. For purposes of this section, P is referred to as the common parent of the life insurance controlled group even though P is not a member of such group.

Example 2. The facts are the same as in *Example 1,* except that, beginning with the 2005 tax year, the P affiliated group elected to file a consolidated return and P made a section 1504(c)(2) election. Pursuant to paragraph (a)(5)(i) of this section, L_1 and L_2 are not members of a separate life insurance controlled group. Instead, P, X, Y, L_1 and L_2 constitute one controlled group. See § 1.1502–47(f)(6).

(6) *Voting power of stock.* For purposes of this section, and §§ 1.1563–2 and 1.1563–3, in determining whether the stock owned by a person (or persons) possesses a certain percentage

of the total combined voting power of all classes of stock entitled to vote of a corporation, consideration will be given to all the facts and circumstances of each case. A share of stock will generally be considered as possessing the voting power accorded to such share by the corporate charter, by-laws, or share certificate. On the other hand, if there is any agreement, whether express or implied, that a shareholder will not vote his stock in a corporation, the formal voting rights possessed by his stock may be disregarded in determining the percentage of the total combined voting power possessed by the stock owned by other shareholders in the corporation, if the result is that the corporation becomes a component member of a controlled group of corporations. Moreover, if a shareholder agrees to vote his stock in a corporation in the manner specified by another shareholder in the corporation, the voting rights possessed by the stock owned by the first shareholder may be considered to be possessed by the stock owned by such other shareholder if the result is that the corporation becomes a component member of a controlled group of corporations.

(b) *Component members*—(1) *In general*—(i) *Definition.* For purposes of sections 1561 through 1563, a corporation is with respect to its taxable year a component member of a controlled group of corporations for the group's testing date if such corporation—

(A) Is a member of such controlled group on such testing date and is not treated as an excluded member under paragraph (b)(2) of this section; or

(B) Is not a member of such controlled group on such testing date but is treated as an additional member under paragraph (b)(3) of this section.

(ii) *Member of a controlled group of corporations.* For purposes of sections 1561 through 1563, a member of a controlled group is a corporation connected with other member(s) of a controlled group under the stock ownership rules and the stock qualification rules set forth in section 1563. Under these rules, for a corporation to qualify as a component member of the group with respect to a group's December 31st testing date (or the short-year testing date for a short-year member), that corporation does not have to be a member of that group on that group's testing date. In addition, a corporation that is a member of a controlled group on the group's testing date does not necessarily qualify as a component member of that group with respect to that testing date.

(iii) *Additional concepts used in applying the controlled group rules.*

(A) The term *testing date* means the date used for determining the status of controlled group members as either component members or excluded members. That testing date is then also used to determine which taxable years of those component members are to be subjected to the controlled group rules. Generally, a member's testing date is the December 31st date included within that member's taxable year, whether such member is on a calendar or fiscal taxable year. However, if a component member of a controlled group has a short taxable year that does not include a December 31st date, then the last day of that short taxable year becomes that member's testing date.

(B) The term *testing period* means the time period used for determining the status of controlled group members as either component members or excluded members. The testing period begins on the first day of a member's taxable year and ends on the day before its testing date. (Generally, the testing date is December 31st, but for a component member having a short taxable year not ending on December 31st, the testing date for the short taxable year of that member (and only that member) becomes the last day of that member's short taxable year.) Thus, for a member on a fiscal taxable year, the portion of its taxable year beginning on December 31st and ending on the last day of its taxable year is not taken into account for determining its status as a component member or an excluded member.

(2) *Excluded members*—(i) *Temporal test.* A corporation, which is a member of a controlled group of corporations on the group's testing date, a date included within that member's taxable year, but who was a member of such group for less than one-half of the number of days of its testing period, shall be treated as an excluded member of such group for that group's testing date.

(ii) *Qualification test.* A corporation which is a member of a controlled group of corporations on a testing date shall be treated as an excluded member of such group on such date if, for its taxable year including such date, such corporation is—

(A) Exempt from taxation under section 501(a) (except a corporation which is subject to tax on its unrelated business taxable income under section 511) or 521 for such taxable year;

(B) A foreign corporation not subject to taxation under section 882(a) for the taxable year;

(C) An S corporation (as defined in section 1361) for purposes of any tax benefit item described in section 1561(a) to which it is not subject;

(D) A franchised corporation (as defined in section 1563(f)(4) and § 1.1563–4); or

(E) An insurance company subject to taxation under section 801, unless such insurance company (without regard to this paragraph (b)(2)(ii)(E)) is a component member of a life insurance controlled group described in paragraph (a)(5)(i) of this section or unless § 1.1502–47(f)(6) applies (which treats a life insurance company, for which a section 1504(c)(2) election is effective, as a member (whether eligible or ineligible) of a life-nonlife affiliated group).

(3) *Additional members.* A corporation shall be treated as an additional member of a controlled group of corporations, that is, an additional component member, on the group's testing date if it—

(i) Is not a member of such group on such date;

(ii) Is not described, with respect to such taxable year, in paragraph (b)(2)(ii)(A), (b)(2)(ii)(B), (b)(2)(ii)(C), (b)(2)(ii)(D), or (b)(2)(ii)(E) of this section; and

(iii) Was a member of such group for one-half (or more) of the number of days in its testing period.

(4) *Examples.* The provisions of this paragraph (b) may be illustrated by the following examples:

Example 1. B, an individual, owns all of the stock of corporations W and X on each day of 1964. W and X each use the calendar year as their taxable year. On January 1, 1964, B also owns all the stock of corporation Y (a fiscal year corporation with a taxable year beginning on July 1, 1964, and ending on June 30, 1965), which stock he sells on October 15, 1964. On December 1, 1964, B purchases all the stock of corporation Z (a fiscal year corporation with a taxable year beginning on September 1, 1964, and ending on August 31, 1965). On December 31, 1964, W, X, and Z are members of the same controlled group. However, the component members of the group on such December 31st are W, X, and Y. Under paragraph (b)(2)(i) of this section, Z is treated as an excluded member of the group on December 31, 1964, since Z was a member of the group for less than one-half of the number of days (29 out of 121 days) during the period beginning on September 1, 1964 (the first day of its taxable year) and ending on December 30, 1964. Under paragraph (b)(3) of this section, Y is treated as an additional member of the group on December 31, 1964, since Y was a member of the group for at least one-half of the number of days (107 out of 183 days) during the period beginning on July 1, 1964 (the first day of its taxable year) and ending on December 30, 1964.

Example 2. On January 1, 1964, corporation P owns all the stock of corporation S, which in turn owns all the

stock of corporation S–1. On November 1, 1964, P purchases all of the stock of corporation X from the public and sells all of the stock of S to the public. Corporation X owns all the stock of corporation Y during 1964. P, S, S–1, X, and Y file their returns on the basis of the calendar year. On December 31, 1964, P, X, and Y are members of a parent-subsidiary controlled group of corporations; also, corporations S and S–1 are members of a different parent-subsidiary controlled group on such date. However, since X and Y have been members of the parent-subsidiary controlled group of which P is the common parent for less than one-half the number of days during the period January 1 through December 30, 1964, they are not component members of such group on such date. On the other hand, X and Y have been members of a parent-subsidiary controlled group of which X is the common parent for at least one-half the number of days during the period January 1 through December 30, 1964, and therefore they are component members of such group on December 31, 1964. Also since S and S–1 were members of the parent-subsidiary controlled group of which P is the common parent for at least one-half the number of days in the taxable years of each such corporation during the period January 1 through December 30, 1964, P, S, and S–1 are component members of such group on December 31, 1964.

Example 3. Throughout 1964, corporation M owns all the stock of corporation F which, in turn, owns all the stock of corporations L_1, L_2, X, and Y. M is a domestic mutual insurance company subject to taxation under section 821, F is a foreign corporation not engaged in a trade or business within the United States, L_1 and L_2 are domestic life insurance companies subject to taxation under section 802, and X and Y are domestic corporations subject to tax under section 11 of the Code. Each corporation uses the calendar year as its taxable year. On December 31, 1964, M, F, L_1, L_2, X, and Y are members of a parent-subsidiary controlled group of corporations. However, under paragraph (b)(2)(ii) of this section, M, F, L_1, and L_2 are treated as excluded members of the group on December 31, 1964. Thus, on December 31, 1964, the component members of the parent-subsidiary controlled group of which M is the common parent include only X and Y.

Furthermore, since paragraph (b)(2)(ii)(E) of this section does not result in L_1 and L_2 being treated as excluded members of a life insurance controlled group, L_1 and L_2 are component members of a life insurance controlled group on December 31, 1964.

(5) *Application of constructive ownership rules.* For purposes of paragraphs (b)(2)(i) and (b)(3)(iii) of this section, it is necessary to determine whether a corporation was a member of a controlled group of corporations for one-half (or more) of the number of days in its taxable year which precede the December 31st falling within such taxable year. Therefore, the constructive ownership rules contained in § 1.1563–3(b) (to the extent applicable in making such determination) must be applied on a day-by-day basis. For example, if P Corporation owns all the stock of X Corporation on each day of 1964, and on December 30, 1964, acquires an option to purchase all the stock of Y Corporation (a calendar-year taxpayer which has been in existence on each day of 1964), the application of § 1.1563–3(b)(1) on a day-by-day basis results in Y being a member of the brother-sister controlled group on only one day of Y's 1964 year which precedes December 31, 1964. Accordingly, since Y is not a member of such group for one-half or more of the number of days in its 1964 year preceding December 31, 1964, Y is treated as an excluded member of such group on December 31, 1964.

(c) *Overlapping groups*—(1) *In general.* If on a December 31st a corporation is a component member of a controlled group of corporations by reason of ownership of stock possessing at least 80 percent of the total value of shares of all classes of stock of the corporation, and if on such December 31st such corporation is also a component member of another controlled group of corporations by reason of ownership of other stock (that is, stock not used to satisfy the at-least-80 percent total value test) possessing at least 80 percent of the total combined voting power of all classes of stock of the corporation entitled to vote, then such corporation shall be treated as a component member only of the controlled group of which it is a component member by reason of the ownership of at least 80 percent of the total value of its shares.

(2) *Brother-sister controlled groups*—(i) *One corporation.* If on a December 31st, a corporation would, without the application of this paragraph (c)(2), be a component member of more than one brother-sister controlled group on such date, the corporation will be treated as a component member of only one such group on such date. Such corporation may elect the group in which it is to be included by including on or with its income tax return for the taxable year that includes such date a statement entitled, ''STATEMENT TO ELECT CONTROLLED GROUP PURSUANT TO § 1.1563–1(c)(2).'' This statement must include—

(A) A description of each of the controlled groups in which the corporation could be included. The description must include the name and employer identification number of each component member of each such group and the stock ownership of the component members of each such group; and

(B) The following representation: [INSERT NAME AND EMPLOYER IDENTIFICATION NUMBER OF CORPORATION] ELECTS TO BE TREATED AS A COMPONENT MEMBER OF THE [INSERT DESIGNATION OF GROUP].

(ii) *Multiple corporations.* If more than one corporation would, without the application of this paragraph (c)(2), be a component member of more than one controlled group, those corporations electing to be component members of the same group must file a single statement. The statement must contain the information described in paragraph (c)(2)(i) of this section, plus the names and employer identification numbers of all other corporations designating the same group. The original statement must be included on or with the original Federal income tax return (including any amended return filed on or before the due date (including extensions) of such return) of the corporation that, among those corporations which would (without the application of this paragraph (c)(2)) belong to more than one group, has the taxable year including such December 31st which ends on the earliest date. That corporation must provide a copy of the statement to each other corporation included in the statement and represent in its statement that it has done so. Either the original or a copy of the statement must be retained by each corporation as part of its records. See § 1.6001–1(e) of this chapter.

(iii) *Election.* (A) An election filed under this paragraph (c)(2) is irrevocable and effective until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(B) In the event no election is filed in accordance with the provisions of this paragraph (c)(2), then the Internal Revenue Service will determine the group in which such corporation is to be included. Such determination will be binding for all subsequent years unless the corporation files a valid election with respect to any such subsequent year or until a change in the stock ownership of the corporation results in termination of membership in the controlled group in which such corporation has been included.

(iv) *Examples.* The provisions of this paragraph (c)(2) may be illustrated by the following examples (in which it is assumed that all the individuals are unrelated):

Example 1. (i) On each day of 1970 all the outstanding stock of corporations X, Y, and Z is held in the following manner:

Individuals	Corporations		
	X (%)	Y (%)	Z (%)
A	55	40	5
B	40	20	40
C	5	40	55

(ii) Since the more-than-50 percent identical ownership requirement of section 1563(a)(2) is met with respect to corporations X and Y and with respect to corporations Y and Z, but not with respect to corporations X, Y, and Z, corporation Y would, without the application of this paragraph (c)(2), be a component member on December 31, 1970, of overlapping groups consisting of X and Y and of Y and Z. If Y does not file an election in accordance with paragraph (c)(2)(i) of this section, the Internal Revenue Service will determine the group in which Y is to be included.

Example 2. (i) On each day of 1970, all the outstanding stock of corporations V, W, X, Y, and Z is held in the following manner:

Individuals	Corporations				
	V	W	X	Y	Z
D	52	52	52	52	52
E	40	2	2	2	2
F	2	40	2	2	2
G	2	2	40	2	2
H	2	2	2	40	2
I	2	2	2	2	40

(ii) On December 31, 1970, the more-than-50 percent identical ownership requirement of section 1563(a)(2) may be met with regard to any combination of the corporations but all five corporations cannot be included as component members of a single controlled group because the inclusion of all the corporations in a single group would be dependent upon taking into account the stock ownership of more than five persons. Therefore, if the corporations do not file a statement in accordance with paragraph (c)(2)(ii) of this section, the Internal Revenue Service will determine the group in which each corporation is to be included. The corporations or the Internal Revenue Service, as the case may be, may designate that three corporations be included in one group and two corporations in another, or that any four corporations be included in one group and that the remaining corporation not be included in any group.

(d) *Transitional rules*—(1) *In general.* Treasury decision 8179 amended paragraph (a)(3)(ii) of this section to revise the definition of a brother-sister controlled group of corporations. In general, those amendments are effective for taxable years ending on or after December 31, 1970.

(2) *Limited nonretroactivity*—(i) *Old group.* Under the authority of section 7805(b), the Internal Revenue Service will treat an old group as a brother-sister controlled group corporations for purposes of applying sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Internal Revenue Code (Code) and sections 202, 203, 204, and 302 of the Employment Retirement Income Security Act of 1974 (ERISA) in a plan year or taxable year beginning before March 2, 1988, to the extent necessary to prevent an adverse effect on any old member (or any other corporation), or on any plan or other entity described in such sections (including plans, etc., of corporations not part of such old group), that would result solely from the retroactive effect of the amendment to this section by TD 8179. An adverse effect includes the disqualification of a plan or the disallowance of a deduction or credit for a contribution to a plan. The Internal Revenue Service, however, will not treat an old member as a member of an old group to the extent that such treatment will have an adverse effect on that old member.

(ii) *Old member of old group.* Section 7805(b) will not be applied pursuant to paragraph (d)(2)(i) of this section to treat an old member of an old group as a member of a brother-sister controlled group to prevent an adverse effect for a taxable year if, for that taxable year, that old member treats or has treated itself as not being a member of that old group for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 and Title IV of ERISA for such taxable year (such as by filing, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating itself as not being a member of the old group for purposes of those sections). However, the fact that one or more (but not all) of the old members do not qualify for section 7805(b) treatment because of the preceding sentence will not preclude that old member (or members) from being treated as a member of the old group under paragraph (d)(2)(i) of this section in order to prevent the disallowance of a deduction or credit of another old member (or other corporation) or to prevent the disqualification of, or other adverse effect on, another old member's plan (or other entity) described in the sections of the Code and ERISA enumerated in such paragraph.

(3) *Election of general nonretroactivity.* In the case of a taxable year ending on or after December 31, 1970, and before March 2, 1988, an old group will be treated as a brother-sister controlled group of corporations for all purposes of the Code for such taxable year if—

(i) Each old member files a statement consenting to such treatment for such taxable year with the District Director having audit jurisdiction over its return within six months after March 2, 1988; and

(ii) No old member—

(A) Files or has filed, with respect to such taxable year, a return, amended return, or claim for credit or refund in which the amount of any deduction, credit, limitation, or tax due is determined by treating any old member as not a member of the old group; or

(B) Treats the employees of all members of the old group as not being employed by a single employer for purposes of sections 401, 404(a), 408(k), 409A, 410, 411, 412, 414, 415, and 4971 of the Code and sections 202, 203, 204, and 302 of ERISA for such taxable year.

(4) *Definitions.* For purposes of this paragraph (d)—

(i) An *old group* is a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as in effect before the amendments made by TD 8179, that is not a brother-sister controlled group of corporations, determined by applying paragraph (a)(3)(ii) of this section as amended by such Treasury decision; and

(ii) An *old member* is any corporation that is a member of an old group.

(5) *Election to choose between membership in more than one controlled group*—(i) *In general.* A corporation may make an election under paragraph (c)(2) of this section by filing an amended return on or before September 2, 1988 if—

(A) An old member has filed an election under paragraph (c)(2) of this section to be treated as a component member of an old group for a December 31st before March 2, 1988; and

(B) That corporation would (without regard to such paragraph (c)(2)) be a component member of more than one brother-sister controlled group (not including an old group) on December 31st.

(ii) *Exception.* This paragraph (d)(5) does not apply to a corporation that is treated as a member of an old group under paragraph (d)(3) of this section.

(6) *Refunds.* See section 6511(a) for period of limitation on filing claims for credit or refund.

(e) *Effective/applicability date.* This section applies to taxable years beginning on or after May 26, 2009. However, taxpayers may apply this section to taxable years beginning before May 26, 2009. For taxable years beginning before May 26, 2009, see § 1.1563–1T as contained in 26 CFR part 1 in effect on April 1, 2009.

§ 1.1563–1T [Removed]

■ **Par. 3.** Section 1.1563–1T is removed.

§ 1.1563–3 [Amended]

■ **Par. 4.** Section 1.1563–3(d)(3), *Example 3,* is amended by removing the language ''§ 1.1563–1T'' and adding ''§ 1.1563–1'' in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

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

Authority: 26 U.S.C. 7805.

■ **Par. 6.** In § 602.101, paragraph (b) is amended as follows:

■ 1. The following entry to the tables is removed:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.1563–1T	1545–2019
* * * * *	

■ 2. The following entry is added in numerical order to the table:

§ 602.101 OMB Control Numbers.

* * * * *

(b) * * *

CFR part or section where identified or described	Current OMB control No.
* * * * *	
1.1563–1	1545–2019
* * * * *	

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: May 20, 2009.

Michael F. Mundaca,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E9–12296 Filed 5–26–09; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0133; FRL–8909–6]

Approval and Promulgation of Air Quality Implementation Plans; California; Determination of Attainment of the 1-Hour Ozone Standard for the Ventura County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On April 15, 2009, the California Air Resources Board (CARB) requested that EPA find that the Ventura County ozone nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). After a review of this submission and of the relevant monitoring data, EPA is making such a finding.

Because the area has attained the 1-hour standard by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the standard by its attainment date. In addition, EPA finds that the area is not subject to the Clean Air Act penalty fee requirements for severe and extreme ozone nonattainment areas that have not attained the 1-hour standard by the applicable attainment date.

DATES: This rule is effective on July 27, 2009 without further notice, unless EPA receives adverse comments by June 26, 2009. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule does not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09–OAR–2009–0133, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: nudd.gregory@epa.gov.*
3. *Fax:* (415) 947–3579.
4. *Mail or Delivery:* Greg Nudd (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR-2009–0133. 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 a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *http://www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (*e.g.* copyrighted material), and some may not be publicly available at either location (*e.g.* confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Greg Nudd, Environmental Engineer, EPA Region IX, (415) 947–4107, *nudd.gregory@epa.gov*.

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

Table of Contents

I. What Is the Background for This Action?
II. How Does the SCAQMD Decision Regarding EPA's 8-Hour Phase 1 Ozone Implementation Rule Affect This Action?
III. Attainment Finding
IV. What Action Is EPA Taking?
V. Statutory and Executive Order Reviews

I. What Is the Background for This Action?

Under section 107(d)(1)(C) of the Clean Air Act (CAA), the Ventura County, California area was designated nonattainment for the 1-hour ozone NAAQS by operation of law upon enactment of the 1990 CAA Amendments. Under section 181(a) of the CAA, each ozone area designated nonattainment under section 107(d) was also classified by operation of law as ''marginal,'' ''moderate,'' ''serious,'' ''severe-15,'' ''severe-17,'' or ''extreme,'' depending on the severity of the area's air quality problem and the number of years to reach attainment from the time of the CAA Amendments.

The ozone design value for an area, which characterizes the severity of the air quality problem, is represented by the highest ozone design value at any of the individual ozone monitoring sites in the area. Table 1 in section 181(a) of the CAA provides the design value ranges for each nonattainment classification. Ozone nonattainment areas with design values between 0.180 parts per million (ppm) and 0.190 ppm for the three-year period, 1987–1989, were classified as severe-15. Because the Ventura County, California area's 1988 ozone design value fell between 0.180 and 0.190 ppm, this area was classified as severe-15 nonattainment for the 1-hour ozone NAAQS. These nonattainment designations and classifications were codified in title 40 of the Code of Federal Regulations (CFR) part 81 (see 56 FR 56994, November 6, 1991).

Under section 182(c) of the CAA, states containing areas that were classified as severe-15 nonattainment were required to submit State Implementation Plans (SIPs) to provide for certain emission controls, to show progress toward attainment, and to provide for attainment of the ozone NAAQS as expeditiously as practicable, but no later than November 15, 2005. The State of California included plans for bringing Ventura County into attainment with the 1-hour ozone standard in their 1994 State Implementation Plan (SIP) revision that EPA approved on January 8, 1997 (62 FR 1150). Specifically, EPA approved the Ventura 1994 ozone SIP with respect to the Act's requirements for emission inventories, control measures, modeling, demonstrations of 15% Rate of Progress (ROP), post-1996 ROP and attainment of the 1-hour ozone standard.

In 1997, EPA adopted a new 8-hour ozone NAAQS. One of the implementation rules for the standard, referred to as the Phase 1 Implementation Rule, was published on April 30, 2004 (69 FR 23951), and addressed how requirements that applied in an area for the 1-hour ozone NAAQS would apply in the transition from the 1-hour standard to the 8-hour standard. Challenges to this rule were decided in *South Coast Air Quality Management District* v. *EPA*, 472 F.3d 882 (DC Cir. 2006) (SCAQMD), rehearing denied 489 F.3d 1245, which we considered in this action.

II. How Does the SCAQMD Decision Regarding EPA's 8-Hour Phase 1 Ozone Implementation Rule Affect This Action?

On December 22, 2006, the U.S. Court of Appeals for the District of Columbia Circuit vacated EPA's Phase 1 Implementation Rule for the 8-hour Ozone Standard. *SCAQMD* v. *EPA*, 472 F.3d 882. On June 8, 2007, in response to several petitions for clarification and rehearing, the DC Circuit clarified that the Phase 1 Rule was vacated only with regard to those parts of the rule that had been successfully challenged. 489 F.3d 1245. With respect to the challenges to the anti-backsliding provisions of the rule, the Court vacated three provisions that would have allowed States to remove from the SIP or to not adopt three SIP obligations related to the 1-hour ozone standard once the 1-hour ozone standard was revoked: (1) Nonattainment area new source review (NSR) requirements based on an area's 1-hour nonattainment classification; (2) section 185 penalty fees for severe or extreme 1-hour ozone nonattainment areas that fail to attain the 1-hour ozone standard by the 1-hour ozone attainment date; and (3) measures to be implemented pursuant to section 172(c)(9) or 182(c)(9) of the Act, on the contingency of an area not making reasonable further progress (RFP) toward attainment of the 1-hour NAAQS or for failure to attain that NAAQS. The Court clarified that 1-hour ozone conformity determinations are not required for anti-backsliding purposes.

Thus, the provisions waiving these three requirements, which were specified in 40 CFR 51.905(e), were vacated by the Court. As a result of the vacatur, States must continue to meet the obligations for 1-hour ozone NSR; 1-hour ozone contingency measures; and, for severe and extreme areas, the obligations related to a section 185 fee program. EPA has issued a proposed rule that would remove the vacated provisions of 40 CFR 51.905(e) and that addresses treatment of contingency measures for failure to attain or make reasonable further progress toward attainment of the 1-hour standard. See 74 FR 2936, January 16, 2009 (proposed rule); 74 FR 7027, February 12, 2009 (notice of public hearing and extension of comment period). EPA is developing a proposed rule to address treatment of 1-hour NSR and section 185 fees for failure to attain the 1-hour standard.

We address below how the 1-hour ozone obligations that currently continue to apply as a result of the Court's vacatur of the waiver provisions are treated where EPA makes a determination that the area attained the 1-hour ozone standard by its attainment date.

III. Attainment Finding

In 1991, the Ventura County, California area was classified as severe-15 for the 1-hour ozone NAAQS. An area is considered to have attained the 1-hour ozone NAAQS if there are no violations of the standard, as determined in accordance with the regulation codified at 40 CFR 50.9 and the related regulatory appendix, 40 CFR Part 50, Appendix H, based on three consecutive calendar years of complete, quality-assured monitoring data. A violation occurs when the ozone air quality monitoring data show greater than one (1.0) average expected

exceedance per year at any site in the area. An exceedance occurs when the maximum hourly ozone concentration during any day exceeds 0.124 ppm. In accordance with 40 CFR part 58, the data should be collected and quality-assured and recorded in the Air Quality System so that they are available to the public for review.

The finding of attainment for the Ventura County, California area is based on an analysis of 1-hour ozone air quality data from 2003–2005. Table 1 summarizes these data.

TABLE 1—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN VENTURA COUNTY, CALIFORNIA (2003–2005)

Monitor	Site ID	2003	2004	2005	Average number of expected exceedances (2003–2005)
Thousand Oaks	06–111–0007	0.0	0.0	0.0	0.0
Piru	06–111–0009	0.0	0.0	0.0	0.0
Ojai	06–111–1004	1.0	0.0	0.0	0.3
Simi Valley	06–111–2002	1.0	0.0	0.0	0.3
Ventura	06–111–2003	0.0	0.0	0.0	0.0
El Rio	06–111–3001	0.0	0.0	0.0	0.0

Based on the monitoring data summarized in Table 1, the EPA finds that the Ventura County, California area attained the 1-hour ozone NAAQS by its attainment date of November 15, 2005.

TABLE 2—AVERAGE NUMBER OF OZONE EXPECTED EXCEEDANCE DAYS PER YEAR BY MONITORS IN VENTURA COUNTY, CALIFORNIA (2006–2008)

Monitor	Site ID	2006	2007	2008	Average number of expected exceedances (2003–2005)
Thousand Oaks	06–111–0007	0.0	0.0	0.0	0.0
Piru	06–111–0009	0.0	0.0	0.0	0.0
Ojai	06–111–1004	0.0	0.0	0.0	0.0
Simi Valley	06–111–2002	1.0	0.0	0.0	0.3
Ventura	06–111–2003	0.0	0.0	0.0	0.0
El Rio	06–111–3001	0.0	0.0	0.0	0.0

Based on the monitoring summarized in Table 2, the EPA finds that the Ventura County, California area continues to attain the 1-hour ozone NAAQS.

IV. What Action Is EPA Taking?

EPA is determining that the Ventura County, California area attained the 1-hour ozone standard by its attainment date, November 15, 2005.

The data summary presented in Table 1 demonstrates that there was less than one expected exceedance of the 1-hour ozone standard in Ventura County averaged over the 3 years 2003 to 2005. Because the area attained the 1-hour standard by the applicable attainment date, the area is not subject to the requirement to implement contingency measures for failure to attain the standard by its attainment date. As such, even if the area subsequently lapses into nonattainment, it would not be required to implement the contingency measures for failure to attain the standard by its attainment date.

Section 185(a) of the CAA states that a severe or extreme ozone nonattainment area must implement a program to impose fees on certain stationary sources of air pollution if the area ''has failed to attain the national primary ambient air quality standard for ozone by the applicable attainment date.'' Consequently, if such an area has attained the standard as of its applicable attainment date, even if it subsequently lapses into nonattainment, the area would not be required to implement a section 185 fee program. Because EPA is determining that the Ventura County, California area attained the 1-hour standard by its applicable attainment date, we conclude that the area is not subject to the requirements of section 185 for the 1-hour standard. Accordingly, we also determine that the State is not required to submit a SIP under Section 182(d)(3) of the CAA to implement a section 185 program for the 1-hour standard in this area.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 CAA. 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 CAA; 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 (59 FR 22951, 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.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by Reference, Intergovernmental relations, Ozone.

Dated: May 14, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations 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 F—California

■ 2. A new § 52.282 is added to read as follows:

§ 52.282 Control strategy and regulations: Ozone.

(a) *Attainment determination.* EPA has determined that the Ventura County severe 1-hour ozone nonattainment area attained the 1-hour ozone NAAQS by the applicable attainment date of November 15, 2005. EPA also has determined that the Ventura County severe 1-hour ozone nonattainment area is not subject to the requirements of section 185 of the Clean Air Act (CAA) for the 1-hour standard and that the State is not required to submit a SIP under Section 182(d)(3) of the CAA to implement a section 185 program for the 1-hour standard in this area. In addition, the requirements of section 172(c)(9) (contingency measures) for the 1-hour standard do not apply to the area.

(b) [Reserved]

[FR Doc. E9–12135 Filed 5–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2008–0554; FRL–8413–5]

Etoxazole; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of etoxazole in or on stone fruit; plum; prune; spearmint tops and oil; peppermint tops and oil; tomato; and cucumber. This regulation also deletes the existing cherry tolerance, as it will be superseded by inclusion in the stone fruit crop group. The Interregional Research Project Number 4 (IR-4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective May 27, 2009. Objections and requests for hearings must be received on or before July 27, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2008–0554. All documents in the docket are listed in the docket index available at *http://www.regulations.gov*. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Laura Nollen, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–7390; e-mail address: *nollen.laura@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

• Crop production (NAICS code 111).

• Animal production (NAICS code 112).

• Food manufacturing (NAICS code 311).

• Pesticide manufacturing (NAICS code 32532).

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2008–0554 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk as required by 40 CFR part 178 on or before July 27, 2009.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2008–0554, by one of the following methods:

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

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

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

II. Petition for Tolerance

In the **Federal Register** of August 13, 2008 (73 FR 47186) (FRL–8375–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 8E7347) by IR-4, Rutgers, The State University of New Jersey, 500 College Road East, Suite 201 W., Princeton, NJ 08540. The petition requested that 40 CFR 180.593 be amended by establishing tolerances for residues of the insecticide etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on fruit, stone, group 12, except plum at 1.0 parts per million (ppm); plum at 0.12 ppm; plum, prune, dried at 0.4 ppm; cucumber at 0.02 ppm; tomato at 0.25; spearmint, tops at 10 ppm; peppermint, tops at 10 ppm; peppermint, oil at 20 ppm; and spearmint, oil at 20 ppm. The petition additionally requested to delete the tolerance for residues of etoxazole in or on the food commodity cherry at 1.0 ppm. That notice referenced a summary of the petition prepared on behalf of IR-4 by Valent U.S.A. Corporation, the registrant, which is available to the public in the docket, *http://www.regulations.gov*. Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA has revised the proposed tolerance levels for plum; plum, prune, dried; and tomato. The reason for these changes is explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with section 408(b)(2)(D) of FFDCA, and the factors specified in section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for the petitioned-for tolerances for residues of etoxazole on fruit, stone, group 12, except plum at 1.0 ppm; plum at 0.15 ppm; plum, prune, dried at 0.30 ppm; cucumber at 0.02 ppm; tomato at 0.20; spearmint, tops at 10 ppm; peppermint, tops at 10 ppm; peppermint, oil at 20 ppm; and spearmint, oil at 20 ppm. EPA's assessment of exposures and risks associated with establishing tolerances follows.

A. Toxicological Profile

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

The existing etoxazole data indicate that it possess low acute toxicity via all routes of exposure. It is not an eye or dermal irritant or a dermal sensitizer. No toxicity was seen at the limit dose in a 28–day dermal toxicity study in rats.

The liver is the main target organ in mice, rats and dogs. In a 90–day toxicity study in dogs, increased liver weights and centrilobular hepatocellular swelling in the liver were observed. Similar effects were observed in a chronic toxicity study in dogs at similar doses, indicating that systemic effects (mainly liver effects) occur at similar dose levels following short- through long-term exposure without increasing in severity. In a 90–day toxicity study in mice, hepatotoxicity (increased relative liver weight, liver enlargement, and centrilobular hepatocellular swelling) was observed at high doses. Similar effects were observed at the high dose in a mouse carcinogenicity study. Subchronic and chronic toxicity studies in rats produced similar effects (increased liver weights, centrilobular hepatocellular swelling, etc.) to those seen in mice and dogs. In addition, slight increases in thyroid weights and incisors were observed in subchronic and chronic toxicity studies in rats at high doses and at terminal stages of the study. Toxicity was not observed at the highest dose tested (HDT) in another carcinogenicity study in mice. There is no evidence of immunotoxicity or neurotoxicity in any of the submitted studies.

Two studies in mice showed no evidence of carcinogenicity up to the HDT. In a rat carcinogenicity study, which was deemed unacceptable due to inadequate dosing, benign interstitial cell tumors (testis) and pancreas benign islet cell adenomas were observed (in females) at the high dose. These effects were not observed in an acceptable carcinogenicity study in rats at higher doses. In special mechanistic male rat studies there were no observable

changes in serum hormone levels (estradiol, luteinizing hormone (LH), prolactin and testosterone) or reproductive effects (interstitial cell proliferation or spermatogenesis) noted. EPA classified etoxazole as ''not likely to be carcinogenic to humans.'' Etoxazole is not mutagenic.

The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. The rabbit developmental toxicity study included maternal toxic effects (liver enlargement, decreased weight gain, and decreased food consumption) at the same dose as developmental effects (increased incidences of 27 presacral vertebrae and 27 presacral vertebrae with 13th ribs). In the two-generation reproduction study conducted with rats, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose, indicating increased qualitative susceptibility.

Specific information on the studies received and the nature of the adverse effects caused by etoxazole as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studiescan be found at *http://www.regulations.gov* in document ''Etoxazole; Human Health Risk Assessment for Proposed Uses on Stone Fruits, Cucumber, Tomato, and Mint,'' pages 29-31 in docket ID number EPA–HQ–OPP–2008–0554.

B. Toxicological Endpoints

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

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

A summary of the toxicological endpoints for etoxazole used for human risk assessment can be found at *http://www.regulations.gov* in document ''Etoxazole; Human Health Risk Assessment for Proposed Uses on Stone Fruits, Cucumber, Tomato, and Mint,'' page 15 in docket ID number EPA–HQ–OPP–2008–0554.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses*. In evaluating dietary exposure to etoxazole, EPA considered exposure under the petitioned-for tolerances as well as all existing etoxazole tolerances in (40 CFR 180.593). EPA assessed dietary exposures from etoxazole in food as follows:

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

No such effects were identified in the toxicological studies for etoxazole; therefore, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure*. In conducting the chronic dietary exposure assessment EPA used the food consumption data from the USDA 1994–1996 and 1998 CSFII. As to residue levels in food, EPA used tolerance-level residues and empirically determined (when available) or DEEM default processing factors. Additionally, EPA assumed 100 percent crop treated (PCT) for all commodities covered by proposed or existing tolerances.

iii. *Cancer*. Two mouse studies showed no evidence of carcinogenicity at the high dose. While benign interstitial cell tumors in the testis and pancreas benign islet cell adenomas were observed in an unacceptable rat carcinogenicity study, these effects were not seen in a repeat study at higher doses. Furthermore, special mechanistic male rat studies resulted in no observable changes in serum hormone levels (estradiol, luteinizing hormone, prolactin and testosterone) or reproductive effects (interstitial cell proliferation or spermatogenesis). EPA determined that cancer risk concerns due to long-term consumption of etoxazole residues are adequately addressed by the chronic dietary exposure analysis; therefore, etoxazole was classified as ''not likely to be carcinogenic to humans,'' and a quantitative exposure assessment to evaluate cancer risk is unnecessary.

iv. *Anticipated residue and PCT information*. EPA did not use anticipated residue or PCT information in the dietary assessment for etoxazole. Tolerance level residues and 100 PCT were assumed for all food commodities.

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

Based on the First Index Reservoir Screening Tool (FIRST) model for surface water, and Screening Concentration in Ground Water (SCI-GROW) model for ground water, the estimated drinking water concentrations (EDWCs) of etoxazole and its major metabolites (R-8 and R-13) for surface water are estimated to be 15.73 parts per billion (ppb) for acute exposures and 4.761 ppb for chronic exposures. For ground water, the estimated drinking water concentration is estimated to be 0.746 ppb.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For chronic dietary risk assessment, the water concentration of value 4.761 ppb was used to assess the contribution to drinking water.

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

is not registered for any specific use patterns that would result in residential exposure.

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

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

D. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity*. The toxicology data for etoxazole provides no indication of increased susceptibility, as compared to adults, of rat and rabbit fetuses to *in utero* exposure in developmental studies. In a rat reproduction study, offspring toxicity was more severe (pup mortality) than parental toxicity (increased liver and adrenal weights) at the same dose; thereby indicating increased qualitative susceptibility. Based on the above concerns, a Degree of Concern Analysis was performed by EPA, which concluded that concern is low since:

i. The effects in pups are well-characterized with a clear NOAEL;

ii. The pup effects occur at the same dose as parental toxicity; and

iii. The doses selected for various risk assessment scenarios are lower than the doses that caused offspring toxicity.

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

i. The toxicity database for etoxazole is complete except for acute and subchronic neurotoxicity and immunotoxicity studies. Recent changes to 40 CFR 180.158 make acute and subchronic neurotoxicity testing (OPPTS Guideline 870.6200), and immunotoxicity testing (OPPTS Guideline 870.7800) required for pesticide registration. Because these testing requirements went into effect shortly before the tolerance petition was submitted, these studies are not yet available for etoxazole. However, the available data for etoxazole do not show potential for immunotoxicity. Further, there is no evidence of neurotoxicity in any study in the toxicity database for etoxazole. Therefore, EPA does not believe that conducting neurotoxicity and immunotoxicity studies will result in a NOAEL lower than the NOAEL of 4.62 milligrams/kilograms/day already established for etoxazole. Consequently, an additional database uncertainty factor does not need to be applied.

ii. There is no indication that etoxazole is a neurotoxic chemical and there is no need for a developmental neurotoxicity study or additional Uncertainity Factors (UFs) to account for neurotoxicity.

iii. Although there is qualitative evidence of increased susceptibility of offspring (pup mortality) compared to less severe parental effects (increased liver and adrenal weights) at the same dose in the rat multi–generation reproduction study, the Agency did not identify any residual uncertainties after establishing toxicity endpoints and traditional UFs (10X for interspecies variation and 10X for intraspecies variation) to be used in the risk assessment. Therefore, there are no residual concerns regarding developmental effects in the young.

iv. There are no residual uncertainties identified in the exposure databases. The dietary food exposure assessments were performed based on 100 PCT and tolerance-level residues. EPA made conservative (protective) assumptions in the ground and surface water modeling used to assess exposure to etoxazole in drinking water. These assessments will not underestimate the exposure and risks posed by etoxazole.

E. Aggregate Risks and Determination of Safety

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

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

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to etoxazole from food and water will utilize 10% of the cPAD for children 1-2 years old, the population group receiving the greatest exposure. There are no residential uses for etoxazole to consider.

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

Etoxazole is not registered for any use patterns that would result in residential exposure. Therefore, the short-, and intermediate-term aggregate risk is the sum of the risk from exposure to etoxazole through food and water and will not be greater than the chronic aggregate risk.

4. *Aggregate cancer risk for U.S. population*. As discussed in Unit III.C.1.iii., EPA has classified etoxazole as ''not likely to be carcinogenic to humans,'' and it is not expected to pose a cancer risk to humans.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodologies (gas chromatography/nitrogen-phosphorus detection (GC/NPD) and gas chromatography/mass selective detection (GC/MSD) methods) are available to enforce the tolerance expression. The methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Currently, there are no Codex, Canadian, or Mexican maximum residue limits (MRLs) established for residues of etoxazole in or on the subject commodities.

C. Response to Comments

EPA received one comment to the Notice of Filing that made a general objection to the presence of any pesticide residues on crops and stated that EPA should set no pesticide tolerance greater than zero. The Agency understands the commenter's concerns and recognizes that some individuals believe that pesticides should be banned completely. However, the existing legal framework provided by section 408 of FFDCA states that tolerances greater than zero may be set when persons seeking such tolerances or exemptions have demonstrated that the pesticide meets the safety standard imposed by that statute. This citizen's comment appears to be directed at the underlying statute and not EPA's implementation of it; the citizen has made no contention that EPA has acted in violation of the statutory framework.

D. Revisions to Petitioned-For Tolerances

Based upon review of the data supporting the petition, EPA revised tolerances for certain proposed commodities, as follows: Plum from 0.12 ppm to 0.15 ppm; plum, prune, dried from 0.40 ppm to 0.30 ppm; and tomato from 0.25 ppm to 0.20 ppm. EPA revised the tolerance levels based on analysis of the residue field trial data using the Agency's Tolerance Spreadsheet in accordance with the Agency's *Guidance for Setting Pesticide Tolerances Based on Field Trial Data*.

V. Conclusion

Therefore, tolerances are established for residues of etoxazole, 2-(2,6-difluorophenyl)-4-[4-(1,1-dimethylethyl)-2-ethoxyphenyl]-4,5-dihydrooxazole, in or on fruit, stone, group 12, except plum at 1.0 ppm; plum at 0.15 ppm; plum, prune, dried at 0.30 ppm; cucumber at 0.02 ppm; tomato at 0.20 ppm; spearmint, tops at 10 ppm; peppermint, tops at 10 ppm; spearmint, oil at 20 ppm; and peppermint, oil at 20 ppm. This regulation also deletes the existing tolerance in or on cherry at 1.0 ppm, as it is superseded by inclusion in fruit, stone, group 12.

VI. Statutory and Executive Order Reviews

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

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

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

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

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: May 15, 2009.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.593 is amended in paragraph (a), by removing the commodity ''Cherry'' and by alphabetically adding the following commodities to the table to read as follows:

§ 180.593 Etoxazole; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * *	
Cucumber	0.02
* * * * *	
Fruit, stone, group 12, except plum	1.0
* * * * *	
Peppermint, oil	20
Peppermint, tops	10
* * * * *	
Plum	0.15
Plum, prune, dried	0.30
* * * * *	
Spearmint, oil	20
Spearmint, tops	10
* * * * *	
Tomato	0.20
* * * * *	

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[FR Doc. E9–12292 Filed 5–26–09; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 286

RIN 0970–AC40

Temporary Assistance for Needy Families (TANF) Carry-Over Funds

AGENCY: Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Interim final rule.

SUMMARY: This rule implements the statutory change to section 404(e) of the Social Security Act (42 U.S.C. 604(e)) as enacted by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). This change allows States, Tribes and Territories to use Temporary Assistance for Needy Families (TANF) program funds carried over from a prior year for any allowable TANF benefit, service or activity. Previously these funds could be used only to provide assistance. This interim final rule applies to States, local governments, and Tribes that administer the TANF program.

DATES: *Effective Date:* May 27, 2009.

Comment Date: Comments are due on or before July 27, 2009.

ADDRESSES: You may mail or hand-deliver comments regarding this interim rule to the Administration for Children and Families, Office of Family Assistance, 370 L'Enfant Promenade, SW., 5th floor, Washington, DC 20447. You also may transmit comments electronically via the Internet at: *http://www.regulations.gov*. You may download an electronic version of this rule at: *http://www.regulations.gov.*

All comments received, including any personal information provided, will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m., at 901 D St., SW., 5th Floor, Washington DC.

FOR FURTHER INFORMATION CONTACT: Robert Shelbourne, Director, Division of State TANF Policy and Acting Director, Division of Tribal TANF Management, Office of Family Assistance, ACF, at (202) 401–5150.

SUPPLEMENTARY INFORMATION:

I. Statutory Authority

Section 417 of the Social Security Act (42 U.S.C. 617) limits the authority of the Federal government to regulate State conduct or enforce the TANF provisions of the Social Security Act, except as expressly provided. We have interpreted this provision to allow us to regulate where Congress has charged HHS with enforcing certain TANF provisions by assessing penalties. Because the improper use of Federal TANF carry-over funds can result in a financial penalty pursuant to 42 U.S.C. 609(a)(1), we have the authority to regulate in this instance.

Justification for Interim Final Rule

The Administrative Procedures Act requirements under 5 U.S.C. 553 for notice of proposed rulemaking do not apply to rules when the agency finds good cause that notice is impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)). We find proposed rulemaking unnecessary because the policy was effective upon enactment and this regulatory action merely updates program regulations to reflect current law and avoid any unnecessary confusion on the part of States and Tribes. The change made to the TANF program by the Recovery Act on the use of carry-over funds was intended to provide increased flexibility immediately to States and Tribes to support work and families especially during this difficult economic period. If this regulation were delayed, States and Tribes might be hesitant to take advantage of the flexibility afforded by the statutory change because of the conflict with the regulation, and any confusion resulting from that conflict.

For the same reason given above, we also find good cause for waiving the Administrative Procedures Act requirement under 5 U.S.C. 553(d) which provides that a rule generally may not become effective less than 30 days after it is published in the **Federal Register**. Since the statute was effective upon enactment and because this regulation merely updates the regulations to reflect the current law, this rule is effective upon publication.

II. American Recovery and Reinvestment Act of 2009

On February 17, 2009, the President signed the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5), which included a provision to lift the restriction on unspent Federal TANF funds reserved or ''carried over'' into a succeeding fiscal year. Prior to Public Law 111–5, carry-over funds could only be used to provide assistance (*i.e.*, ongoing basic needs payments, and supportive services such as transportation and child care to families who are not employed). Section 2103 of Division B of Public Law 111–5 amends section 404(e) of the Social Security Act (Act) by allowing States, District of Columbia, the Territories and Tribes to use the carry-over funds for any allowable TANF benefit, service, or activity (such as job skills training or re-training activities, employment counseling services, parental counseling services, teen pregnancy prevention activities, services for victims of domestic violence, after-school programs)—and not just assistance.

Thus, the policy reflected in this interim final rule is effective immediately and applies to all Federal TANF funds carried over into fiscal year 2009 as well as to all future Federal TANF funds carried over into a subsequent year.

Herein after and as defined in section 419(5) of the Social Security Act, we will use ''States'' to mean the 50 States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, and American Samoa. (However, American Samoa has chosen not to participate in the TANF program.)

III. Regulatory Provisions

As discussed below, section 2103 of Public Law 111–5 requires a change in the Tribal TANF regulation at 45 CFR 286.60. The TANF regulations at 45 CFR Part 263, applicable to States and Territories, require no change.

Part 286—Tribal TANF Provisions

Section 286.60: Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

Under prior law, section 404(e) of the Act, entitled ''Authority to Reserve Certain Amounts for Assistance,'' allowed States and Indian Tribes

operating approved Tribal TANF programs (Tribes) to reserve Federal TANF funds that they receive ''for any fiscal year for the purpose of providing, without fiscal year limitation, assistance under the State or tribal program funded under this part'' (Title IV, Part A of the Act). Based on the reading of this section, we concluded that States and Tribes could only use reserve or ''carry-over'' funds to provide TANF assistance, defined in 45 CFR 260.31 for States and in 45 CFR 286.10 for Tribes, and to pay for the administrative expenses associated with providing the assistance. The statutory wording also precluded States from transferring ''carry-over'' funds to either the Social Services Block Grant Program (SSBG) under title XX of the Act or the Child Care and Development Block Grant Program (also known as the Child Care Discretionary Fund within the Child Care and Development Fund (CCDF)). (The transfer provision in section 404(d) of the Act does not apply to Tribes.)

Section 2103 of Division B of Public Law 111–5 (American Recovery and Reinvestment Act of 2009) amended section 404(e) of the Social Security Act. The amendment allows States and Tribes to use unspent Federal TANF funds carried over from prior fiscal years ''to provide, without fiscal year limitation, any benefit or service that may be provided under the State or tribal program funded under this part.'' Thus, States and Tribes are no longer restricted to using carry-over TANF funds to provide benefits that specifically meet the definition of *assistance*. States and Tribes may expend carry-over funds for any allowable TANF benefit, service, or activity. Because the amended section 404(e) continues to specify that carry-over funds may only be used ''under this part''—*i.e.*, in the TANF program, States may not transfer any carry-over funds to either CCDF or the SSBG program. States may only transfer current year Federal TANF funds (up to the statutory limit) to these programs.

Accordingly, we have amended § 286.60 because the limitation on the use of carry-over funds explicitly appears in this section. We have deleted paragraph (b) which previously read, ''A Tribe may expend funds beyond the fiscal year in which awarded only on benefits that meet the definition of assistance at § 286.10 or on the administrative costs directly associated with providing that assistance.'' This sentence is no longer accurate because the law removes the restriction. We have revised the remaining language to provide that a Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under § 286.35 or § 286.40, if applicable.

No change in the regulations related to the State TANF program is necessary, as those regulations speak more broadly to improper uses of TANF funds. Specifically, § 263.11(b) currently states that ''We will consider use of funds in violation of * * * sections 404 and 408 and other provisions of the Act * * * to be misuse of funds.'' This statement is not impacted by the change to section 404(e) of the Act.

IV. Paperwork Reduction Act

There are no information collection activities imposed by this regulation, nor are any existing requirements changed as a result of their promulgation. Therefore, the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) regarding reporting and recordkeeping, do not apply.

V. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in this Act to include small businesses as defined by the Small Business Administration, non-profit organizations that are not dominant in their markets, and small governmental jurisdictions. This rule will affect primarily the 50 States, the District of Columbia, certain Territories, and Indian Tribes operating approved Tribal TANF programs. Therefore, we certify that this rule will not have a significant impact on small entities.

VI. Regulatory Impact Analysis

Executive Order 12866 requires the review of regulations to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this interim final rule is consistent with these priorities and principles. This regulation implements a statutory change in the use of Federal TANF block grant funds carried over from a prior fiscal year included in the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). Further, we certify that this change is not an ''economically significant regulatory action'' under Section 3(f)(1) of Executive Order 12866. It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. TANF block grant awards remain the same; this change in statute simply allows carry-over funds under the TANF program to be used for broader purposes.

The Department, however, has determined that this rule is significant for the purposes of review under Section 3(f)(4) of Executive Order 12866 and therefore has been reviewed by the Office of Management and Budget (OMB).

VII. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that a covered agency prepare a budgetary impact statement before promulgating a 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 $133 million or more in any one year. The Department has determined that this rule would not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $133 million in any one year.

VIII. Congressional Review

This regulation is not a major rule as defined in 5 U.S.C. Chapter 8.

IX. Assessment of Federal Regulation and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may negatively affect family well being. If the agency's determination is affirmative, then the agency must prepare an impact assessment addressing seven criteria specified in the law.

The Department has determined that this regulation does not negatively affect family well being. The purpose of the TANF program is to strengthen the economic and social stability of families. This rule lifts the restriction on the use of Federal TANF carry-over funds so that States and Tribes may provide the services that families need to attain and maintain self-sufficiency.

X. Executive Order 13132

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with Federalism implications. Consistent with this

Executive Order, we specifically solicited comments from State and local government officials on this interim final rule. We will seriously consider these comments in developing the final rule.

List of Subjects in 45 CFR Part 286

Carry over, Reserve, Prior fiscal years, Federal TANF funds.

(Catalog of Federal Domestic Assistance Program Number 93.558, Temporary Assistance for Needy Families Program)

Dated: March 30, 2009.

Curtis L. Coy,

Acting Assistant Secretary for Children and Families.

Approved: April 28, 2009.

Charles E. Johnson,

Acting Secretary, Department of Health and Human Services.

■ For the reasons stated in the preamble, we are amending 45 CFR chapter II by amending part 286 as set forth below:

PART 286—TRIBAL TANF PROVISIONS

■ 1. The authority citation for part 286 is revised to read as follows:

Authority: 42 U.S.C. 601, 604, and 612; Public Law 111–5.

■ 2. Revise § 286.60 to read as follows:

§ 286.60 Must Tribes obligate all Tribal Family Assistance Grant funds by the end of the fiscal year in which they are awarded?

No. A Tribe may reserve amounts awarded to it, without fiscal year limitation, to provide assistance, benefits, and services in accordance with the requirements under § 286.35 or § 286.40, if applicable.

[FR Doc. E9–12187 Filed 5–26–09; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MB Docket Nos. 07–294, 06–121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–33]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The *Report and Order* adopts changes to the reporting requirements on FCC Form 323, ''Ownership Report for Commercial Broadcast Stations'' to improve Form 323 data collection in order to obtain an accurate, reliable, and comprehensive assessment of minority and female broadcast ownership in the United States. The FCC also is broadening Form 323 reporting requirements to require low power television station licensees, including Class A stations, to file biennially.

DATES: The amendments to §§ 73.3615, 73.6026, and 74.797 contain information collection requirements that have not been approved by OMB. The FCC will publish a document in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, (202) 418–2330, Amy Brett (202) 418–2703.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order* (R&O) adopted April 8, 2009, and released May 5, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554.

Summary of the Report and Order

1. In the (R&O) (1) the FCC enlarges the class of licensees required to file ownership reports biennially to include LPTV stations, including Class A stations, as well as commercial broadcast stations licensed to sole proprietors and partnerships composed of natural persons; (2) for purposes of defining the class of interests that are reportable, the FCC will not apply two attribution exemptions—the single majority shareholder exemption and the exemption for interests held in eligible entities that would be attributable but for the higher Equity/Debt Plus (''EDP'') thresholds adopted in the *Diversity Order;* (3) the FCC set a uniform biennial filing date in place of the filing date tied to stations' renewal anniversaries; and (4) the FCC set an initial filing date of no later than November 1, 2009. To effectuate these changes, as discussed more fully below, the FCC delegates authority to staff to (1) revise the FCC Form 323 according to the parameters adopted in the (R&O); (2) revise the electronic interface so that the ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced; (3) build additional checks into Form 323 to perform verification and review functions and to preclude the filing of incomplete or inaccurate data; and (4) conduct audits on a random basis to ensure accuracy of Form 323 Reports.

2. Currently, full power broadcast stations are required to periodically file Form 323 Ownership Reports to identify their organizational and ownership structures. Form 323 also requires stations to provide information on owners' race, ethnicity, and gender. Currently, full power commercial broadcast licensees are required to file Form 323: (1) When filing the station's license renewal application; (2) following the consummation of an assignment or transfer of control of the station license; (3) within 30 days after the grant of a construction permit for a new commercial radio or television station; and (4) at two-year intervals on the anniversary date of the station's renewal application filing date. The biennial reporting requirement does not apply, however, where the licensee is a sole proprietor or a partnership that is composed entirely of natural persons. In lieu of filing a new report, a licensee with a current and unamended report may certify that it has reviewed its current report and that it is accurate. The Commission does not require LPTV stations, including Class A stations, to file Form 323. If a full power commercial licensee or permittee is directly or indirectly controlled by another entity or if another entity holds an attributable interest in such licensee or permittee, a separate Form 323 is required to be submitted for such entity. To determine which interests are reportable on Form 323, the Commission uses its broadcast attribution rules, including the multiplier, which applies when an interest in a licensee is held indirectly by any party through one or more intervening entities in a vertical ownership chain. Form 323 defines the term ''respondent'' as either the licensee or permittee or an entity controlling or holding an attributable interest in the licensee or permittee. Each respondent, other than a natural person, is required to list its officers, directors, stockholders, and other entities with attributable interests, its non-insulated partners, and/or its members.

3. In 1998, the Commission began collecting data on minority and female broadcast ownership to fulfill the Commission's statutory mandate under Section 257 of 1996 Telecom Act of 1996 and Section 309(j) of the Communications Act of 1934 to promote opportunities for small businesses and businesses owned by women and minorities in the broadcasting industry. The Commission revised Form 323 to

require filers to identify the gender and race or ethnicity of individuals with attributable interests in the licensee. The Commission concluded that the information was needed to ''determine accurately the current state of minority and female ownership of broadcast facilities, to determine the need for measures designed to promote ownership by minorities and women, and to chart the success of any such measures that the Commission may adopt.''

4. It became apparent that the current collection methodology is inadequate and incomplete and cannot accurately be used to determine the state of minority and female broadcast ownership. Study authors who attempted to use the data contend that the data are incomplete, inaccurate, duplicative, and subject to significant measurement error. Specific problems cited include ownership percentages exceeding 100%, inconsistent racial classifications from year to year, missing and inaccurate information, and missing filings. The authors also note that because the biennial filing deadlines are tied to the station's renewal application filing date, it is impossible to obtain a snapshot of broadcast ownership at any one particular moment in time to use as a benchmark or for analytical purposes. The authors recommend that the Commission collect race and gender data on a regular basis not only from commercial broadcasters that are currently exempt from the biennial reporting requirement, but also from non-commercial licensees. Researchers object to the use of attachments for submitting ownership data because the attachments cannot be electronically searched in the database or cross-referenced with other forms. Researchers also state that the filing of multiple forms by separate entities for a single station creates additional difficulties for performing analysis.

5. *GAO Study.* In March 2008, the United States Government Accountability Office (''GAO'') released a report recommending that the FCC identify processes and procedures to improve the reliability of its data on gender, race, and ethnicity so that it can more effectively monitor and report on the status of female and minority broadcast ownership. The GAO identifies three weaknesses of the data: (1) Exemptions from the biennial filing requirement for certain types of broadcast stations, (2) inadequate data quality procedures, and (3) problems with data storage and retrieval. First, the GAO concludes that because individuals, partnerships of natural persons, low power stations, and non-commercial broadcast stations are exempt from filing Form 323 biennially, it is not possible to identify the full universe of broadcast stations owned by minorities and women.

The GAO criticizes the Commission for not verifying or periodically reviewing the gender, race, and ethnicity data submitted on Form 323. The GAO finds that reporting of ownership data on attachments is problematic because the data are not entered into the database, which renders the database unreliable and unusable for electronic queries. The GAO also criticizes the Commission for retaining outdated ownership forms in its database, even when a form has been updated. The GAO commends the Commission for taking several measures to address these concerns, noting, for instance, that the Commission now allows owners to modify information on a previously submitted Form 323, instead of requiring modifications to be submitted on a new form, and it precludes electronic submissions of incomplete forms. However, the GAO faults the Commission for continuing to allow respondents to file ownership information on attachments to Form 323, for not having any regular review process, and for not imposing consequences for misfiling that would encourage accurate, complete, and timely submission of Form 323.

6. On March 5, 2008, the Commission released the *Diversity Order* to increase participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses, which historically have not been well represented in the broadcasting industry. The Commission adopted a number of new rules and policies intended to encourage ownership diversity and new entry in broadcasting. The Commission discussed the benefits of conducting ''longitudinal studies'' of minority and female ownership in order to track ownership trends over time and agreed to begin research once the Commission improved the data collection process and gathered the necessary data. The Commission concluded that such studies could help parties to assess the impact of changes in the media ownership rules on minority and female ownership and provide real-time feedback on the impact of the Commission's rules and policies on licensing, access to capital, availability of spectrum, and opportunities for minority and female ownership. The Commission stated that it would modify Form 323 Ownership Report to improve the quality and usefulness of the data and sought comment on specific proposals.

7. *Form 323.* In the *Third Further Notice,* the Commission sought comment on whether to create a new form to collect data on minority and female ownership or to modify the existing Form 323. The Commission tentatively concluded that it should modify the existing Form 323 and not create a new form for this purpose and commenters agreed. The FCC continues to believe that use of Form 323 is the most efficient and least burdensome method of collecting minority and female broadcast ownership data. Broadcasters are familiar with the form and how to complete it. In the R&O, the FCC decides to continue to use Form 323 to collect data on minority and female ownership and will retain the existing biennial reporting interval for the form. Commission staff is directed to modify the existing FCC Form 323 consistent with the discussion in the R&O. The FCC delegates to staff the authority to modify the format, structure, content, and placement of questions designed to elicit empirical information as to minority and female ownership within the boundaries of the policies adopted in the R&O. In designing the appropriate questions to elicit the information, the R&O states that staff should balance the goals of increasing data quality and comprehensiveness with that of minimizing burdens on respondents wherever possible.

8. *Enlarging the Class of Stations Required to File Biennially.* In order to obtain comprehensive, up-to-date ownership data, the FCC is requiring all full power commercial broadcast stations and all low power television stations, including Class A stations, to file FCC Form 323 every two years. Therefore, the FCC is eliminating the exemption from the biennial reporting requirement that currently applies to sole proprietorships and partnerships of natural persons that are licensees of commercial broadcast stations. The R&O finds that any additional filing burdens imposed by this action are counterbalanced by the need to ensure the completeness and accuracy of the data collection efforts. Because the FCC is modifying the form to include additional requests for information and establishing a uniform filing date, the FCC will require all licensees and respondents to file a complete Form 323 by the initial filing date established in the Order. This will allow the first snapshot to be complete and provide a baseline of comparison for later filings every two years. The Commission staff

is directed to revise Form 323 as indicated in the R&O.

9. *Reportable Interests.* Currently, Form 323 requires respondents to provide information, including gender, race, and ethnicity, for all entities with attributable interests in any station that is subject to the reporting requirement. The R&O finds that there are certain areas in which the comprehensiveness of the FCC's minority and female ownership data collection efforts will be materially advanced by deviating from the attribution rules, and the FCC believes that it can do so without unreasonably burdening respondents. While the Commission considers only attributable interest holders in determining whether licensees are in compliance with the media ownership rules, the balance struck in defining what interests should be counted for purposes of implementing the ownership rules may not be appropriate for collecting data on interests held by minorities and women. Specifically, the FCC believes it is important to collect information from holders of equity interests in a licensee that would be attributable but for the single majority shareholder exemption and from holders of interests that would be attributable but for the higher Equity/Debt Plus (''EDP'') thresholds adopted in the *Diversity Order* for purposes of determining attribution of certain interests in eligible entities. The single majority shareholder exemption provides that a minority shareholder's voting interests will not be attributed where a single shareholder owns more than 50 percent of the outstanding voting stock. Accordingly, shareholders holding voting stock interests of 5 percent or more in corporations with a single majority shareholder are required to be reported. Under the Commission's equity/debt plus (''EDP'') standard, an interest is held attributable under the Commission's rules if, aggregating both equity and debt, the interest exceeds 33 percent of the total asset value (all equity plus all debt) of a broadcast station licensee, cable television system, daily newspaper or other media outlet subject to the Commission's broadcast multiple ownership or cross-ownership rules—and the interest holder also (1) holds an attributable interest in another media outlet in the same market that is subject to the multiple or cross-ownership rules, or (2) supplies over 15 percent of the total weekly broadcast programming hours of the station in which the interest is held. The *Diversity Order* adopted a mechanism to allow an interest holder to exceed the 33 percent threshold without triggering attribution if the investment would enable an ''eligible entity'' (as that term is defined in the *Diversity Order*) to acquire a broadcast station provided that (1) the combined equity and debt of the interest holder in the eligible entity is less than 50 percent, or (2) the total debt of the interest holder in the eligible entity does not exceed 80 percent of the asset value of the station being acquired by the eligible entity and the interest holder does not hold any equity interest, option, or promise to acquire an equity interest in the eligible entity or any related entity. In order to obtain a broader scope of ownership data, the FCC will require entities holding interests in licensees that would otherwise be deemed non-attributable by virtue of the ''eligible entity'' exemption to be reported. Accordingly, Commission staff is directed to modify Form 323 so that these two attribution exemptions will not apply for purposes of defining the class of interests that are reportable and the entities that are required to file Form 323.

10. *Database Functionality.* To address criticism of the Commission's current data storage and retrieval system, Commission staff is directed to modify Form 323 so that ownership data is incorporated into the database, is searchable, and can be aggregated and cross-referenced electronically. To further improve the ability of researchers and other users of the data to cross-reference information and construct complete ownership structures, the FCC will require each attributable entity above the licensee in the ownership chain to list on Form 323, the FCC Registration Number (FRN) of the entity in which it holds an attributable interest. In other words, each filing entity must identify by FRN the entity below it in the chain. For example, Licensee A is wholly owned by Corp. B, and Corp. B is wholly owned by Corp. C. Corp. C is required to include on its Form 323, Corp. B's FRN. Corp. B is required to include on its Form 323 the Licensee's FRN. The R&O directs staff to revise Form 323 accordingly. While the FCC believes that these measures will resolve concerns regarding the usefulness of the data, the FCC delegates authority to the staff to revisit this issue if additional modifications of the form are determined to be necessary.

11. *Uniform Reporting Date.* The Commission sought comment on whether to establish a uniform filing date for all respondents. Currently, filing and reporting requirements are tied to stations' renewal cycles, and new data are continually incorporated into the database as it is filed, mixing new data and old data. The FCC's experience with the data has made it apparent that the current use of rolling filing dates has impeded the ability to perform time-related comparisons using its database. None of the commenters opposes a uniform filing date. To make the data easier to work with, to address the problems created by the staggered ownership report filing deadlines currently in effect, and to facilitate studies of ownership, the FCC establishes a uniform filing date and a uniform date on which respondents must biennially identify ownership information as it exists on that date. Therefore, on or before November 1, 2009, and every two years thereafter, all commercial, full power broadcast licensees, LPTV, and Class A licensees, and entities with attributable interests in those licensees are required to file the revised Form 323. The reported ownership information must be current as of October 1 of the year in which the filing is being made. Therefore, for the first filing, all ownership information must be current as of October 1, 2009. The provision of ownership information on a uniform filing date every two years, instead of on a rolling or ad hoc basis, will facilitate comparisons among stations and rigorous analysis.

12. To address additional quality control issues, Commission staff is directed to build additional checks into Form 323 to perform verification and review functions and to preclude the filing of incomplete or inaccurate data. In addition, as discussed above, staff is directed to modify the form to ensure that all ownership data will be filed in a format that can be electronically searched, aggregated, and cross-referenced. As another measure to improve the quality of the ownership data, the Commission directs the Media Bureau to conduct audits on a random basis to ensure the accuracy of the Ownership Reports. The FCC authorizes the Bureau to make revisions to Form 323, its instructions, and the electronic database, as necessary in order to conduct random audits.

13. The Commission sought comment on the penalties to be imposed for licensees that file inaccurate information. The GAO Report recommends that the Commission adopt additional penalties for entities that fail to file the form or that file inaccurate information. NAB opposes the adoption of such penalties. The FCC concludes that current policies and rules are adequate to assure the accuracy of the information reported and that additional penalties are unnecessary. The truthfulness, accuracy, and completeness of information submitted

on a Form 323 must be certified by the individual permittee or licensee, a general partner in the licensee or permittee partnership, or an appropriate officer in the licensee or permittee corporation or association. Licensees are required to exercise reasonable due diligence before certifying to the accuracy of any information that is submitted to the Commission. The FCC determined that the current enforcement procedures are sufficient to ensure that licensees comply with its rules and procedures.

Final Paperwork Reduction Analysis

14. The R&O contains both new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. OMB, the general public, and other Federal agencies are invited to comment on the new and modified information collection requirements contained in this R&O. The Commission will submit the information collection requirements to the Office of Management and Budget (OMB) for review and approval under Section 3507(d) of the PRA and OMB, the general public, and other Federal agencies will again be invited to comment on the new and modified information collection requirements contained in this R&O. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Submit PRA comments on or before July 27, 2009 to Nicholas A. Fraser, Office of Management and Budget, via Internet at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or via Internet at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*

Pursuant to the Small Business Paperwork Relief Act of 2002, Ex. Public Law 107–98, *see* 44 U.S.C. 3506(c)(4), the FCC has considered how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' The FCC finds that the modified requirements must apply fully to small entities (as well as to others) to protect consumers and further other goals, as described in the R&O.

Final Regulatory Flexibility Analysis

15. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Third Further Notice of Proposed Rulemaking* (*FNPRM)* in MB Docket No. 07–294. The Commission sought written public comment on the proposals in the *FNPRM* including comment on the IRFA. The Commission also prepared a Supplemental Initial Regulatory Flexibility Analysis (Supplemental IRFA) and a Second Supplemental Initial Regulatory Flexibility Analysis (Second Supplemental IRFA) of the possible significant economic impact on small entities of the proposals in the Further Notice of Proposed Rulemaking (Further Notice) and the Second Further Notice of Proposed Rulemaking (Second Further Notice), respectively. The Commission sought written public comment on the Further Notice, including comment on the Supplemental IRFA, and written public comment on the Second Further Notice, including comment on the Second Supplemental IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

16. The R&O adopts changes to FCC Form 323, Ownership Report for Commercial Broadcast Stations, and the filing requirements for Form 323, to improve the Commission's collection of data on minority and female broadcast ownership so that the Commission can more accurately assess and effectively promote diversity of ownership in the broadcast industry. The R&O broadens the reporting requirements to require low power television stations (''LPTV'') licensees, Class A television station licensees, and full power commercial broadcast licensees that are sole proprietors and partnerships comprised of natural persons, to file the form biennially. The R&O also requires entities with financial interests that would be attributable (1) but for the single majority shareholder attribution exemption or (2) the higher Equity/Debt Plus threshold adopted in the *Diversity Order* for purposes of attributing certain interests in eligible entities, to file Form 323 every two years. To ensure that the entire collection of minority and female ownership data is current as of a single date for each filing cycle, the R&O states that filers must file Form 323 no later than November 1, with reported ownership information to be current as of October 1 of filing year. The first filings using the new Form 323 will be due on or before November 1, 2009. To address quality control issues, the R&O delegates authority to the Media Bureau staff to perform random audits, and to improve the electronic interface process in order to perform verification and review functions and preclude the filing of incomplete or inaccurate data. The R&O revises 47 CFR 73.3615 and adds 47 CFR 74.797 to implement these changes.

B. Legal Basis

17. The R&O is adopted pursuant to sections 1, 2(a), 4(i), 303, 307, 309, and 310 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 154(i), 303, 307, 309, and 310.

C. Summary of Significant Issues Raised by Public Comments in Response to the IRFA and the Supplemental IRFAs

18. The Commission received no comments in direct response to the IRFA, the Supplemental IRFA, or the Second Supplemental IRFA. However, the Commission received comments that discuss the additional burdens on broadcast licensees, including small entities. The National Association of Broadcasters and American Women in Radio and Television opposed requiring full power commercial broadcast licensees that are sole proprietors to file FCC Form 323 on a biennial basis. Instead, the commenters asked the Commission to retrieve the ownership data for minorities and women from either applications to request an assignment or transfer control of a broadcast station, or to require currently exempt entities to file Form 323 once, and not on a biennial basis. The Commission considered other ways to collect the ownership data, instead of a biennial filing, but determined that the biennial filings from the broader class of entities is needed to collect complete and accurate data, and ultimately to promote broadcast ownership among new entrants and small businesses, including minority- and women-owned businesses.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

19. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under

Section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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 SBA.

20. *Television Broadcasting.* In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $14 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of February 19, 2009, about 918 (71 percent) of the 1,292 commercial television stations in the United States have revenues of $14 million or less. About 180 (14 percent) of the 1,292 commercial television stations are owned by sole proprietorships or partnerships and would be subject to new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new reporting requirements. Therefore, the FCC's estimate likely overstates the number of small entities that might be affected. In addition, the FCC notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. Its estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the filing requirements for FCC Form 323, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

21. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess these criteria in the context of media entities, and the FCC's estimate of small businesses to which the rules may apply may be over-inclusive to this extent.

22. *Radio Broadcasting.* The Small Business Administration defines a radio broadcasting entity that has $7 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Radio Analyzer Database as of February 19, 2009, about 10,600 (96 percent) of 11,050 commercial radio stations in the United States have revenues of $7 million or less. About 1,440 (13 percent) of the 11,050 commercial radio stations are owned by sole proprietors or partnerships, and would be subject to the new reporting requirements. However, these figures take into account all partnerships, and only partnerships comprised of natural persons are subject to new filing requirements. Therefore, the FCC's estimate likely overstates the number of small entities that would be affected. In addition, the FCC notes that in assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The FCC's estimate, therefore, likely overstates the number of small entities that might be affected by any changes to the ownership rules, because the revenue figures on which this estimate is based do not include or aggregate revenues from affiliated companies.

23. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The FCC is unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The FCC notes that it is difficult at times to assess these criteria in the context of media entities, and its estimate of small businesses to which the rules may apply may be over-inclusive to this extent.

24. *Class A TV and LPTV stations.* The rules and policies adopted herein apply to licensees of Class A TV stations and low power television (''LPTV'') stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than $14.0 million in annual receipts. Currently, there are approximately 554 licensed Class A stations and 2,300 licensed LPTV stations. Given the nature of these services, the FCC will presume that all of these licensees qualify as small entities under the SBA definition. The FCC notes, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The FCC's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

25. Currently, the Commission requires certain full power commercial radio and television broadcast stations to periodically file Form 323 Ownership Report to identify their organizational and ownership structures, including information on owners' race, ethnicity, and gender. Licensees of full power commercial stations that are sole proprietors and partnerships comprised of natural persons, and licensees of low power broadcast stations are not required to file Form 323 biennially. The R&O expands the class of entities that are required to file the Form 323 biennially to include all commercial licensees. Thus, sole proprietorships, partnerships of natural persons, and LPTV licensees, including, Class A licensees, must file the Form 323 biennially. In addition, the R&O broadens the filing requirements to include holders of two classes of nonattributable ownership interests: (1) Equity interests in a licensee that would be attributable but for the single majority shareholder exemption and (2) interests that would be attributable but for the higher Equity/Debt Plus thresholds adopted in the *Diversity Order* for purposes of determining attribution of certain interests in eligible entities. The R&O sets a deadline of no later than November 1, 2009, and every two years thereafter, as the biennial filing deadline for Form 323. The R&O also states that ownership data must be current as of October 1 of the filing year.

F. Steps Taken To Minimize Significant Impact on Small Entities and Significant Alternatives Considered

26. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

27. In order to minimize the administrative burdens on licensees, including small businesses, the Commission considered and declined to create a new form to collect the data on minority and female ownership. Instead, the Commission concluded that collecting the information on the current FCC Form 323 is the most efficient and least burdensome method of collecting minority and female broadcast ownership data. The R&O considered as an alternative whether to enlarge the class of stations that are required to file Form 323 biennially and concluded that the most effective way to obtain comprehensive ownership data is to require all full power commercial broadcast stations, LPTV, and Class A stations to file the revised Form 323 biennially. Currently, if a licensee is directly or indirectly controlled by another entity, or if another entity has an attributable interest in such licensee or permittee, a separate Form 323 must be submitted for each such entity. As suggested by NAB, the Commission considered the alternative of revising the reporting requirement so that a single form could be filed for all of the entities ultimately controlled by the same parent company or a single form for each licensee. The Commission did not revise the current reporting requirement because it was not convinced that requiring broadcasters to obtain all ownership data for parent corporations and attributable entities on a single form would be less burdensome. For instance, the Commission stated that licensees may find it burdensome to collect ownership information as to certain entities that hold interests in the licensee indirectly through a vertical ownership chain. However, to further improve the ability of researchers and other users of the data to cross-reference information and construct complete ownership structures, the Commission is requiring each attributable entity above the licensee in the ownership chain to list, on Form 323, the FCC Registration Number of the entity in which it holds an attributable interest. The Commission considered the alternative of modifying the existing rolling filing schedule which is tied to a station's renewal cycle. In order to permit rigorous analysis based on data that is current as of the same date for all filers, the Commission concluded that it is necessary to establish a uniform submission date for the biennial filings. Therefore, the R&O states that files must file Form 323 no later than November 1, 2009, and every two years thereafter. The R&O also states that ownership data must be current as of October 1 of the filing year.

G. Report to Congress

28. The Commission will send a copy of this R&O, including this FRFA, in a report to Congress and the Government Accountability Office, pursuant to the Congressional Review Act. In addition, the Commission will send a copy of this R&O, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Parts 73 and 74

Radio, Television.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

■ For the reasons stated in the preamble, the Federal Communications Commission amends 47 CFR parts 73 and 74 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 2. Section 73.3615 is amended by revising paragraph (a) introductory text to read as follows:

§ 73.3615 Ownership reports.

(a) The Ownership Report FCC Form 323 must be electronically filed no later than November 1, 2009, and every two years thereafter by each licensee of a commercial AM, FM, or TV broadcast station (''Licensee'') and each entity that holds an interest in the licensee that is attributable for purposes of determining compliance with the Commission's multiple ownership rules (*see* Notes 1–3 to 47 CFR 73.3555) or would be attributable but for the single majority shareholder exemption (*see* former Note 2(b) of 47 CFR 73.3555 and Order 16 FCC Rcd 22310 (2001)) or the higher threshold for attribution of certain interests in eligible entities under the Equity Debt Plus attribution standard (*see* Note 2(i) to 47 CFR 73.3555) (''Respondent''). A Licensee or Respondent with a current and unamended Report on file at the Commission, which was filed on or by the November 1, 2009 initial filing date or thereafter, may electronically certify that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide the following information as of October 1 of the year in which the report is filed:

* * * * *

■ 3. Section 73.6026 is amended by adding the following entry to the end of the list as follows:

§ 73.6026 Broadcast regulations applicable to Class A television stations.

* * * * *

§ 73.3615(a) and (g) Ownership reports.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 4. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

■ 5. Add § 74.797 to subpart G to read as follows:

§ 74.797 Biennial Ownership Reports.

The Ownership Report FCC Form 323 must be electronically filed no later than November 1, 2009, and every two years thereafter by each licensee of a low power television station or Respondent (as defined in § 73.3615(a) of this chapter). Beginning with the 2011 filing, a licensee or Respondent with a current and unamended Report on file at the Commission may certify electronically that it has reviewed its current Report and that it is accurate, in lieu of filing a new Report. Ownership Reports shall provide information as of October 1 of the year in which the report is filed. For information on filing requirements, filers should refer to § 73.3615(a) of this chapter.

[FR Doc. E9–12312 Filed 5–26–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 09–1032; MB Docket No. 09–9; RM–11511]

Radio Broadcasting Services: Mineral and Nevada City, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The staff grants in part a rulemaking petition filed by Shamrock Communications, Inc., by deleting vacant FM Channel 297A at Nevada City, California. However, the staff denies Shamrock's proposal to allot Channel 297A at Mineral, California, because the city-grade (70 dBu) contour of this proposed allotment does not encompass entirely the boundaries of Mineral as required under the Commission's Rules. *See* **SUPPLEMENTARY INFORMATION**, *infra.*

DATES: Effective June 22, 2009.

ADDRESSES: Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 09–9, adopted May 6, 2009, and released May 8, 2009. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., 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, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The *Notice of Proposed Rule Making* in this proceeding solicited comment on deleting the Nevada City allotment. *See* 74 FR 7847 (February 20, 2009). No parties filed comments expressing an interest in retaining or applying for this vacant allotment. In addition, Shamrock's rulemaking petition was filed as part of a hybrid application and rulemaking proposal involving Shamrock's concurrently filed minor change application (File No. BMPH–20071108ACY). In this application, Shamrock proposes the reallotment of Channel 297C from Alturus, California, to Fernley, Nevada, and the associated modification of its construction permit for a new FM station at Alturus. The modification of the Alturus construction permit is contingent upon the deletion of the Nevada City allotment. The *Report and Order* notes that Shamrock's application is being granted simultaneously with the release of the *Report and Order.*

The *Report and Order* does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). The Commission will send a copy of the Report and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Nevada City, Channel 297A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau, Federal Communications Commission.

[FR Doc. E9–12309 Filed 5–26–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 200, 201, 209, 211, 212, 214, 215, 216, 219, 221, 224, 227, 228, 229, 230, 232, 235, 236, 238, 239, 240, 241, 244, 245, 256, 260, and 268

[Docket No. FRA–2008–0128]

RIN 2130–AB99

Amendments Updating the Address for the Federal Railroad Administration and Reflecting the Migration to the Federal Docket Management System

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending a number of its regulations to update the address of the physical headquarters of FRA and the U.S. DOT in Washington, DC. FRA is also amending references to the Central Docket Management System (DMS) to reflect DOT's migration to the Federal Docket Management System (FDMS). This rule also modifies requirements for submitting petitions to the Railroad Safety Board, to make the requirements consistent with current FRA practice. Lastly, this rule updates outdated authority citations and removes parts for which authority no longer exists.

DATES: Effective May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Gross, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Mail Stop 10, Washington, DC 20590 (telephone 202–493–1342), *elizabeth.gross@dot.gov.*

SUPPLEMENTARY INFORMATION: In December 2007, FRA moved its offices to the new U.S. DOT Headquarters located at 1200 New Jersey Avenue, SE., Washington, DC 20590. This final rule updates 49 CFR subtitle B, chapter II to accurately reflect the new address of FRA and DOT. This address change only affects FRA offices previously located at 1120 Vermont Avenue, NW., Washington, DC 20590 and the DOT Headquarters previously located at 400 Seventh Street, SW., Washington, DC 20590. FRA offices located elsewhere are not affected. Additionally, on October 26, 2007, all data on DOT's Central Docket Management System migrated to the Federal Docket Management System. This rule amends outdated references to DOT's Docket Management System in order to accurately reflect DOT's conversion to the new docket system. This rule also changes requirements for submitting

petitions to the Railroad Safety Board, to make clear that only one copy of a petition needs to be submitted instead of three, and that petitions should be submitted to the Docket Clerk instead of the Secretary of the Railroad Safety Board.

This rule also updates outdated authority citations that were either repealed or were from a prior version of the United States Code. It also removes part 201, ''Formal Rules of Practice for Passenger Service,'' which prescribed procedures for FRA consideration of proposals to increase speed or add trains pursuant to subsections 402(f) and (h) of the Rail Passenger Service Act of 1970, Public Law 91–518, 84 Stat. 1335. DOT's authority for this part was transferred to the Surface Transportation Board in section 213 of the Passenger Rail Investment and Improvement Act of 2008, Public Law 110–432, Div. B, 122 Stat. 4848 (2008). This rule also removes part 245, ''Railroad User Fees'' which imposed a schedule of fees on railroads to cover the costs incurred by FRA in administering the Federal Railroad Safety Act of 1970, Public Law 91–458, 84 Stat. 971. Under 49 U.S.C. 20115(e), the statutory authority for this part expired in 1995. Lastly, the rule removes the name of a former FRA Administrator.

Public Participation

This is a final rule and there has been no notice of proposed rulemaking or opportunity for public comment. The amendments are administrative in nature and merely correct outdated references and amend procedures for submitting petitions to the Railroad Safety Board. FRA is not exercising its discretion in a way that could be informed by public comment. As such, FRA finds that notice and public comment procedures are ''impracticable, unnecessary, or contrary to the public interest'' under 5 U.S.C. 553(b)(3)(B). For the same reasons, FRA has determined that there is good cause under 5 U.S.C. 553(d) for making these amendments effective upon publication.

Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under Executive Order 12866 and was not reviewed by the Office of Management and Budget. This rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11304). This rule merely updates outdated references to FRA's address and docket system, and makes *de minimis* changes to procedures for submitting petitions to the Railroad Safety Board. As such, the economic impact of this final rule is minimal and preparation of a regulatory evaluation is not warranted.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This final rule does not have a substantial effect on the States, on the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, preparation of a Federalism assessment under Executive Order 13132 is not warranted.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

D. Regulatory Flexibility Act

FRA certifies that this final rule will not have a significant economic impact on a substantial number of small entities. This final rule only corrects outdated references to the address of FRA and DOT, updates references to DOT's docket system, and changes procedures for submitting petitions to the Railroad Safety Board.

E. Paperwork Reduction Act

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

F. Compliance With the Unfunded Mandates Reform Act of 1995

This final rule will not result in the expenditure, in the aggregate, of $132,300,000 or more in any one year by State, local, or Indian Tribal governments, or the private sector, and thus preparation of a statement is not required.

G. Environmental Assessment

There are no significant environmental impacts associated with this final rule.

H. Energy Impact

According to definitions set forth in Executive Order 13211, there will be no significant energy action as a result of the issuance of this final rule.

List of Subjects

49 CFR Part 200

Administrative practice and procedure, Railroads.

49 CFR Part 201

Administrative practice and procedure, Railroads.

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 211

Administrative practice and procedure, Rules of practice.

49 CFR Part 212

Hazardous materials transportation, Intergovernmental relations, Investigations, Railroad safety.

49 CFR Part 214

Bridges, Occupational safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 215

Freight, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 216

Penalties, Railroad safety.

49 CFR Part 219

Alcohol abuse, Drug abuse, Drug testing, Penalties, Railroad safety, Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 221

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 224

Incorporation by reference, Penalties, Railroad locomotive safety, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 227

Incorporation by reference, Locomotive noise control, Occupational

safety and health, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 228

Penalties, Railroad employees, Reporting and recordkeeping requirements.

49 CFR Part 229

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 230

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 235

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 236

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 239

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 240

Administrative practice and procedure, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 241

Communications, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 244

Administrative practice and procedure, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 245

Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 256

Grant programs—transportation, Railroads, Reporting and recordkeeping requirements.

49 CFR Part 260

Loan programs—transportation, Railroads.

49 CFR Part 268

Grant programs—transportation, Railroads, Reporting and recordkeeping requirements.

The Final Rule

■ Accordingly, under 49 U.S.C. 20115(e) and for the reasons stated in the preamble, the Federal Railroad Administration amends 49 CFR subtitle B, chapter II as follows:

PART 200—INFORMAL RULES OF PRACTICE FOR PASSENGER SERVICE

■ 1. The authority citation for part 200 is revised to read as follows:

Authority: Sec. 406 of Pub. L. 91–518, 84 Stat. 1327, as amended by sec. 10(2) of Pub. L. 93–146, 87 Stat. 548 and sec. 121 of Pub. L. 96–73, 93 Stat. 537 (49 U.S.C. 24309); 49 CFR 1.49.

§ 200.5 [Amended]

■ 2. Section 200.5(a) is amended by removing the words ''400 7th Street, SW.'' and adding, in their place, the words ''1200 New Jersey Avenue, SE.''.

PART 201—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 201, consisting of §§ 201.1 through 201.23.

PART 209—RAILROAD SAFETY ENFORCEMENT PROCEDURES

■ 4. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§§ 209.9 and 209.327 [Amended]

■ 5. In 49 CFR part 209, remove the words ''400 Seventh Street, SW.'' and add, in their place, ''1200 New Jersey Avenue, SE.'' in the following places:

a. Section 209.9; and

b. Section 209.327(a).

PART 211—RULES OF PRACTICE

■ 6. The authority citation for part 211 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

§§ 211.1, 211.5, 211.7, 211.45, 211.53, and 211.55 [Amended]

■ 7. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column.

Section	Remove	Add
211.1(b)(4)	1120 Vermont Avenue, NW	1200 New Jersey Avenue, SE.
211.1(b)(4)	Department of Transportation Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
211.5(a)(1)	DOT Docket Management System	Federal Docket Management System.
211.5(a)(2)(i)	DOT Docket Management System, room Pl–401 (plaza level), 400 Seventh Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
211.5(a)(2)(i)	Docket Management System	Federal Docket Management System.
211.5(a)(2)(ii)	*http://dms.dot.gov*	*http://www.regulations.gov*.
211.5(b)	seventh floor, 1120 Vermont Avenue	1200 New Jersey Avenue, SE.
211.7(b)(2)	DOT Central Docket Management System	Federal Docket Management System.
211.7(b)(2)	Central Docket Management System	Federal Docket Management System.
211.7(b)(2)	*http://dms.dot.gov*	*http://www.regulations.gov*.
211.45(b)	DOT Document Management System (DMS)	Federal Docket Management System (FDMS).
211.45(b)	DMS	FDMS.
211.45(b)	*http://dms.dot.gov*	*http://www.regulations.gov*.
211.45(b)	DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
211.45(f)(3)	1120 Vermont Avenue, NW	1200 New Jersey Avenue, SE.
211.45(g)	DMS	FDMS.

Section	Remove	Add
211.45(h) introductory text	DMS	FDMS.
211.45(h)(3)	DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room 12–140, 1200 New Jersey Avenue, SE.
211.45(h)(3)	*http://dms.dot.gov*	*http://www.regulations.gov*.
211.45(h)(3)	DOT DMS	FDMS.
211.45(i)	DMS	FDMS.
211.53	in triplicate to the Secretary, Railroad Safety Board	in accordance with § 211.7.
211.55	in triplicate to the Secretary, Railroad Safety Board	in accordance with § 211.7.
211.55	Board	Railroad Safety Board.

§ 211.7 [Amended]

■ 8. Section 211.7(b)(1) is further amended by removing the words ''in triplicate''.

Appendix A to Part 211—[Amended]

■ 9. Appendix A is amended by removing the words ''1120 Vermont Ave., NW.'' from paragraph I. and adding, in their place, ''1200 New Jersey Avenue, SE.''.

PART 212—STATE SAFETY PARTICIPATION REGULATIONS

■ 10. The authority citation for part 212 continues to read as follows:

Authority: 49 U.S.C. 20103, 20106, 20105, and 20113 (formerly secs. 202, 205, 206, and 208, of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 431, 434, 435, and 436)); and 49 CFR 1.49.

§ 212.5 [Amended]

■ 11. Section 212.5 is amended by removing the words ''400 Seventh Street, SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

PART 214—RAILROAD WORKPLACE SAFETY

■ 12. The authority citation for part 214 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§§ 214.113, 214.115, 214.117, and 214.307 [Amended]

■ 13. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
214.113(b)	1120 Vermont Avenue NW	1200 New Jersey Avenue, SE.
214.115(b)	1120 Vermont Avenue	1200 New Jersey Avenue, SE.
214.117(b)	1120 Vermont Avenue	1200 New Jersey Avenue, SE.
214.307(a)	400 Seventh Street, SW	1200 New Jersey Avenue, SE.

PART 215—RAILROAD FREIGHT CAR SAFETY STANDARDS

■ 14. The authority citation for part 215 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 215.203 [Amended]

■ 15. Section 215.203(c)(2) is amended by removing the words ''in triplicate''.

PART 216—SPECIAL NOTICE AND EMERGENCY ORDER PROCEDURES: RAILROAD TRACK, LOCOMOTIVE AND EQUIPMENT

■ 16. The authority citation for part 216 continues to read as follows:

Authority: 49 U.S.C. 20102–20104, 20107, 20111, 20133, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 216.5 [Amended]

■ 17. Section 216.5(b) is amended by removing the words ''in triplicate''.

PART 219—CONTROL OF ALCOHOL AND DRUG USE

■ 18. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20140, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(m).

§§ 219.4 and 219.211 [Amended]

■ 19. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column.

Section	Remove	Add
219.4(e)(2)(i)	*Web site*	*Federal eRulemaking Portal*.
219.4(e)(2)(i)	*http://dms.dot.gov*	*http://www.regulations.gov*.
219.4(e)(2)(i)	DOT electronic docket site	Federal Docket Management System electronic docket site.
219.4(e)(2)(iii)	Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
219.4(e)(2)(iv)	Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW.	Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue, SE.
219.4(e)(3)	*http://dms.dot.gov*	*http://www.regulations.gov*.
219.211(e)	400 Seventh Street, SW	1200 New Jersey Avenue, SE.

§ 219. 4 [Amended]

■ 20. Section 219.4 is further amended by removing paragraph (e)(2)(v).

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER AND FREIGHT TRAINS

■ 21. The authority citation for part 221 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Appendix A to Part 221—[Amended]

■ 22. Appendix A is amended as follows:

■ a. In paragraph (a)(2)(i), remove the words ''2100 Second Street SW.'' and add, in their place, ''1200 New Jersey Avenue, SE.''; and

■ b. In paragraph (d) remove the words ''in triplicate''; and

■ c. In paragraph (d) remove the words ''2100 Second Street SW.'' and add, in their place, ''1200 New Jersey Avenue, SE.''.

PART 224—REFLECTORIZATION OF RAIL FREIGHT ROLLING STOCK

■ 23. The authority citation for part 224 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20148 and 21301; 28 U.S.C. 2461; and 49 CFR 1.49.

§§ 224.15 and 224.103 [Amended]

■ 24. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column.

Section	Remove	Add
224.15(b)(2)	Three copies of each	Each.
224.15(b)(2)	1120 Vermont Ave., NW	1200 New Jersey Avenue, SE.
224.15(d)(2)	DOT Central Docket Management System, Nassif Building, Room PL–401, 400 Seventh Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
224.15(d)(2)	Central Docket Management System and posted on its Web site at *http://dms.dot.gov*.	Federal Docket Management System and posted on its Web site at *http://www.regulations.gov*.
224.103(b)	1120 Vermont Ave., NW., Suite 7000	1200 New Jersey Avenue, SE., Washington, DC 20590.

PART 227—OCCUPATIONAL NOISE EXPOSURE

■ 25. The authority citation for part 227 continues to read as follows:

Authority: 49 U.S.C. 20103, 20103 (note), 20701–20702; 49 CFR 1.49.

§§ 227.5, 227.103, and 227.111 [Amended]

■ 26. In 49 CFR part 227, remove the words ''1120 Vermont Ave., NW., Suite 700, Washington, DC 20005'' and add, in their place, ''1200 New Jersey Avenue, SE., Washington, DC 20590'' in the following places:

a. Section 227.5, definition of ''*Sound level or Sound pressure level''*;

b. Section 227.103(h); and

c. Section 227.111(b).

Appendix B to Part 227—[Amended]

■ 27A. In Appendix B to part 227, remove the words ''1120 Vermont Ave., Suite 700, Washington DC 20005'' and add, in their place, ''1200 New Jersey Avenue, SE., Washington, DC 20590.''

Appendixes D and E to Part 227—[Amended]

■ 27B. In 49 CFR part 227, remove the words ''1120 Vermont Ave., NW., Suite 700, Washington DC 20005'' and add, in their place, ''1200 New Jersey Avenue, SE., Washington, DC 20590'', in the following places:

a. Appendix D; and

b. Appendix E.

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES

■ 28. The authority citation for part 228 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21108; 28 U.S.C. 2461, note and 49 CFR 1.49.

§ 228.103 [Amended]

■ 29. Section 228.103(c) is amended by removing the words ''in triplicate with the Secretary, Railroad Safety Board, Federal Railroad Administration, Washington, DC 20590'' and adding, in their place, ''in accordance with the requirements of § 211.7(b)(1) of this chapter''.

PART 229—RAILROAD LOCOMOTIVE SAFETY STANDARDS

■ 30. The authority citation for part 229 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20137–38, 20143, 20701–03, 21301–02, 21304; 28 U.S.C. 2401, note; and 49 CFR 1.49(c), (m).

§§ 229.205, 229.207, 229.209, 229.211, and 229.217 [Amended]

■ 31. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column.

Section	Remove	Add
229.205(a)(1)	1120 Vermont Ave., NW Suite 7000	1200 New Jersey Avenue, SE.
229.207(b)	1120 Vermont Ave., NW	1200 New Jersey Avenue, SE.
229.207(c)	1120 Vermont Ave., NW	1200 New Jersey Avenue, SE.
229.207(d)	1120 Vermont Ave., NW	1200 New Jersey Avenue, SE.
229.209(b)	1120 Vermont Ave., NW	1200 New Jersey Avenue, SE.
229.211(b)(2)	Central Docket Management System, Nassif Building, Room PL–401, 400 Seventh Street, SW.	Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
229.211(b)(2)	Central Docket Management System and posted on its Web site at *http://dms.dot.gov*.	Federal Docket Management System and posted on its Web site at *http://www.regulations.gov*.
229.217(a)	1120 Vermont Ave., NW., Suite 7000	1200 New Jersey Avenue, SE.

Appendix A to Part 229—[Amended]

■ 32. The Editorial Note of Appendix A is amended by removing the words ''400 7th St., SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

Appendix H to Part 229—[Amended]

■ 33. Appendix H is amended by removing the words ''1120 Vermont Ave., NW., Suite 700, Washington, DC 20005'' and adding, in their place, ''1200 New Jersey Avenue, SE., Washington, DC 20590''.

PART 230—STEAM LOCOMOTIVE INSPECTION AND MAINTENANCE STANDARDS

■ 34. The authority citation for part 230 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20702; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 230.3 [Amended]

■ 35. Section 230.3 introductory text is amended by removing the words ''400 7th Street, SW'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

§ 230.6 [Amended]

■ 36. Section 230.6(d) is amended by removing the words ''400 Seventh Street'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

PART 232—BRAKE SYSTEM SAFETY STANDARDS FOR FREIGHT AND OTHER NON–PASSENGER TRAINS AND EQUIPMENT; END–OF–TRAIN DEVICES

■ 37. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§§ 232.17, 232.103, 232.305, and 232.307 [Amended]

■ 38. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column:

Section	Remove	Add
232.17(d)(1)	400 7th Street, SW	1200 New Jersey Avenue, SE.
232.17(f)(2)	400 7th Street, SW	1200 New Jersey Avenue, SE.
232.103(l)	1120 Vermont Avenue, NW., Suite 7000	1200 New Jersey Avenue, SE.
232.305(a)	1120 Vermont Avenue, NW., Suite 7000	1200 New Jersey Avenue, SE.
232.307(a)	400 7th Street, SW	1200 New Jersey Avenue, SE.

■ 39. Section 232.17 is further amended by removing the words ''in triplicate'' from:

a. Paragraph (d)(1); and

b. Paragraph (f)(2).

■ 40. Section 232.307(a) is further amended by removing the words ''in triplicate''.

PART 235—INSTRUCTIONS GOVERNING APPLICATIONS FOR APPROVAL OF A DISCONTINUANCE OR MATERIAL MODIFICATION OF A SIGNAL SYSTEM OR RELIEF FROM THE REQUIREMENTS OF PART 236

■ 41. The authority citation for part 235 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 235.13 [Amended]

■ 42. Section 235.13 is amended by:

a. Removing paragraph (b); and

b. Redesignating paragraphs (c) through (f) as paragraphs (b) through (e).

§ 235.14 [Amended]

■ 43. Section 235.14 is amended by removing the words ''Department of Transportation Central Docket Management System, Nassif Building, Room Pl–401, 400 Seventh Street, SW., Washington, DC 20590, and on the Docket Management System's Web site at *http://dms.dot.gov''* and adding, in their place, ''U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, and on the Federal Docket Management System's Web site at *http://www.regulations.gov''*.

§ 235.20 [Amended]

■ 44. Section 235.20(b) is amended by removing the words ''The original and two copies of any protest'' and adding, in their place, ''Protests''.

PART 236—RULES, STANDARDS, AND INSTRUCTIONS GOVERNING THE INSTALLATION, INSPECTION, MAINTENANCE, AND REPAIR OF SIGNAL AND TRAIN CONTROL SYSTEMS, DEVICES, AND APPLIANCES

■ 45. The authority citation for part 236 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20501–505; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§§ 236.905 and 236.913 [Amended]

■ 46. In 49 CFR part 236, remove the words ''1120 Vermont Avenue, NW.'' and add, in their place, ''1200 New Jersey Avenue, SE.'' in the following places:

a. Section 236.905(c)(1); and

b. Section 236.913(c)(1).

■ 47. Section 236.905(c)(1) is further amended by removing the words ''in triplicate''.

§ 236. 909 [Amended]

■ 48. Section 236.909(d)(3)(i) is amended by removing the words ''1120 Vermont Ave., NW., Suite 7000'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

§ 236. 917 [Amended]

■ 49. Section 236.917(b)(1) is amended by removing the words ''1120 Vermont Ave., NW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

■ 50. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§§ 238.21, 238.203, 238.229, 238.230, 238.311, and 238.505 [Amended]

■ 51. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column.

Section	Remove	Add
238.21(d)(2)	Three copies of each	Each.
238.21(d)(2)	1120 Vermont Ave., NW	1200 New Jersey Avenue, SE.
238.21(f)(2)	DOT Central Docket Management System, Nassif Building, Room PI–401, 400 Seventh Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
238.21(f)(2)	Central Docket Management System	Federal Docket Management System.
238.21(f)(2)	*http://dms.dot.gov*	*http://www.regulations.gov*.
238.203(e)	Three copies of each	Each.
238.203(e)	1120 Vermont Ave	1200 New Jersey Avenue, SE.
238.203(g)(2)	DOT Central Docket Management System, Nassif Building, Room PI–401, 400 Seventh Street, SW.	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12B140, 1200 New Jersey Avenue, SE.
238.203(g)(2)	Central Docket Management System	Federal Docket Management System.
238.203(g)(2)	*http://dms.dot.gov*	*http://www.regulations.gov*.
238.229(j)(1)(i)	1120 Vermont Ave., NW., Suite 7000	1200 New Jersey Avenue, SE.
238.230(c)(2)	1120 Vermont Ave., NW., Suite 7000	1200 New Jersey Avenue, SE.
238.311(a)	1120 Vermont Avenue, NW., Suite 7000	1200 New Jersey Avenue, SE.
238.505(a)	1120 Vermont Ave	1200 New Jersey Avenue, SE.
238.505(b)(2)	Three copies of each	Each.
238.505(b)(2)	1120 Vermont Ave	1200 New Jersey Avenue, SE.

Appendix B to Part 238—[Amended]

■ 52. Paragraph (a) introductory text of Appendix B is amended by removing the words ''1120 Vermont Ave., NW., Suite 7000'' and adding, in their place, ''1200 New Jersey Avenue, SE., Washington, DC 20590''.

PART 239—PASSENGER TRAIN EMERGENCY PREPAREDNESS

■ 53. The authority citation for part 239 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20105–20114, 20133, 21301, 21304, and 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49(c), (g), (m).

§ 239.201 [Amended]

■ 54. Section 239.201(a) is amended by removing the words ''Mail Stop 25, 400 Seventh Street, SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE., Mail Stop 25''.

PART 240—QUALIFICATION AND CERTIFICATION OF LOCOMOTIVE ENGINEERS

■ 55. The authority citation for part 240 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20135, 21301, 21304, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§§ 240.111, 240.403, 240.405, 240.407, and 240.411 [Amended]

■ 56. In the table below, for each section indicated in the left column, remove the words indicated in the middle column from wherever they appear in the section, and add the words indicated in the right column.

Section	Remove	Add
240.111(d)	400 Seventh Street, SW	1200 New Jersey Avenue, SE.
240.403(b)(2)	1120 Vermont Avenue, NW	1200 New Jersey Avenue, SE.
240.405(d)(3)	400 Seventh Street SW	1200 New Jersey Avenue, SE.
240.407(b)	Department of Transportation Central Docket Management System, Nassif Building, Room PI–401, 400 Seventh Street, SW..	U.S. Department of Transportation, Docket Operations (M–30), West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE.
240.407(b)	Central Docket Management System.	Federal Docket Management System
240.407(b)	*http://dms.dot.gov*	*http://www.regulations.gov*.
240.411(a)	400 Seventh Street SW	1200 New Jersey Avenue, SE.

■ 57. Section 240.403 is amended by redesignating paragraphs (b)(3)(iv) through (v) as paragraphs (b)(3)(v) through (vi) and adding a new paragraph (b)(3)(iv) to read as follows:

§ 240.403 Petition requirements.

* * * * *

(b) * * *

(3) * * *

(iv) The petitioner's e-mail address (if available);

* * * * *

Appendix B to Part 240—[Amended]

■ 58. Appendix B is amended by removing the words ''400 Seventh Street, SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

Appendix C to Part 240—[Amended]

■ 59. Appendix C is amended by removing the words ''400 Seventh Street, SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

PART 241—UNITED STATES LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

■ 60. The authority citation for part 241 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49.

§ 241.7 [Amended]

■ 61. Section 241.7(a)(2)(iii) is amended by removing the words ''1120 Vermont Avenue, NW.,'' and adding, in their place, ''1200 New Jersey Avenue, SE., Mail''.

PART 244—REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, AND ACQUISITIONS OF CONTROL

■ 62. The authority citation for part 244 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21301; 5 U.S.C. 553 and 559; 28 U.S.C. 2461, note; and 49 CFR 1.49.

§ 244.17 [Amended]

■ 63. Section 244.17(a) is amended by removing the words ''1120 Vermont Avenue, NW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

PART 245—[REMOVED AND RESERVED]

■ 64. Remove and reserve part 245, consisting of §§ 245.1 through 245.303.

PART 256—FINANCIAL ASSISTANCE FOR RAILROAD PASSENGER TERMINALS

■ 65. The authority citation for part 256 is revised to read as follows:

Authority: Sec. 4(i) of the Department of Transportation Act, 49 U.S.C. 5561–5568, as amended by (1) sec. 15 of the Amtrak Improvement Act of 1974, Public Law 93–496, 88 Stat. 1528; (2) sec. 13 of the Amtrak Improvement Act of 1975, Public Law 94–25, 89 Stat. 93; (3) sec. 706 of the Railroad Revitalization and Regulatory Reform Act of 1976, Publaw Law 94–210, 90 Stat. 125; and (4) sec. 219(a) of the Rail Transportation Improvement Act, Public Law 94–555, 90 Stat. 2629; and regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(r).

§ 256.11 [Amended]

■ 66. Section 256.11(f)(2) is amended by:

■ a. Removing the words ''and two (2) copies'';

■ b. Removing the words ''400 7th Street SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''.

■ c. Removing the words ''Each copy shall show the dates and signatures that appear in the original and shall be complete in itself.''

PART 260—REGULATIONS GOVERNING LOANS AND LOAN GUARANTEES UNDER THE RAILROAD REHABILITATION AND IMPROVEMENT FINANCING PROGRAM

■ 67. The authority citation for part 260 continues to read as follows:

Authority: 45 U.S.C. 821, 822, 823; 49 CFR 1.49.

§ 260.31 [Amended]

■ 68. Section 260.31(e) is amended by removing the words ''1120 Vermont Ave., NW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.''

PART 268—MAGNETIC LEVITATION TRANSPORTATION TECHNOLOGY DEPLOYMENT PROGRAM

■ 69. The authority citation for part 268 continues to read as follows:

Authority: 49 U.S.C. 322; 23 U.S.C. 322; 49 CFR 1.49.

§ 268.13 [Amended]

■ 70. Section 268.13 is amended by removing the words ''400 Seventh Street, SW.'' and adding, in their place, ''1200 New Jersey Avenue, SE.'' and by removing ''Honorable Jolene M. Molitoris,''.

Issued in Washington, DC, on May 15, 2009.

Joseph Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–12039 Filed 5–26–09; 8:45 am]

BILLING CODE 4910–06–P

Proposed Rules

Federal Register
Vol. 74, No. 100
Wednesday, May 27, 2009

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

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–138326–07]

RIN 1545–BH22

Tax Avoidance Transactions; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed rulemaking under section 6231 of the Internal Revenue Code that allows the IRS to convert partnership items to nonpartnership items when the application of the unified partnership audit and litigation procedures of sections 6221 through 6234 (TEFRA partnership procedures) with respect to certain tax avoidance transactions interferes with the effective and efficient enforcement of the internal revenue laws.

DATES: The public hearing, originally scheduled for June 4, 2009, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Richard A. Hurst of the Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration), at *Richard.A.Hurst@irscounsel.treas.gov.*

SUPPLEMENTARY INFORMATION: A notice of public hearing that appeared in the **Federal Register** on Friday, February 13, 2009 (74 FR 7205), announced that a public hearing was scheduled for June 4, 2009, at 10 a.m., in the auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is under section 6231 of the Internal Revenue Code.

The public comment period for these regulations expired on May 14, 2009. Outlines of topics to be discussed at the hearing were due on May 15, 2009. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit an outline of the topics to be addressed. As of Wednesday, May 20, 2009, no one has requested to speak. Therefore, the public hearing scheduled for June 4, 2009, is cancelled.

LaNita Van Dyke,

Chief, Publications and Regulations Branch, Legal Processing Division, Associate Chief Counsel (Procedure and Administration).

[FR Doc. E9–12167 Filed 5–26–09; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250, 256, and 260

RIN 1010–AD06

[Docket ID MMS–2007–OMM–0069]

Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Proposed rule.

SUMMARY: The MMS proposes to update and streamline the existing Outer Continental Shelf leasing regulations, and to clarify implementation of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996. The rule would reorganize and reorder leasing requirements to reflect the leasing process more efficiently, as it has evolved over the last 26 years. The rule also proposes changes to parts 250 and 260 that relate to the proposed revisions to part 256.

DATES: Submit comments by September 24, 2009. The MMS may not fully consider comments received after this date. Submit comments to the Office of Management and Budget on the information collection burden in this proposed rule by June 26, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1010–AD06 as an identifier in your message. *See* also Public Availability of Comments under Procedural Matters.

- *Federal eRulemaking Portal: http://www.regulations.gov.* Under the tab ''More Search Options,'' click ''Advanced Docket Search,'' then select ''Minerals Management Service'' from the agency drop-down menu, then click the submit button. In the Docket ID column, select MMS–2007–OMM–0069 to submit public comments and to view supporting and related materials available for this rulemaking. Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link. The MMS will post all comments.
- *Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention:* Regulations and Standards Branch (RSB); 381 Elden Street, MS–4024, Herndon, Virginia 20170–4817. Please reference ''Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf, 1010–AD06'' in your comments and include your name and return address.
- *Send comments on the information collection in this proposed rule to:* Interior Desk Officer 1010–AD06, Office of Management and Budget; 202–395–5806 (fax); *e-mail: oira_docket@omb.eop.gov*. Please also send a copy to MMS.

FOR FURTHER INFORMATION CONTACT: For comments or questions on procedural issues, contact Kumkum Ray, Regulations and Standards Branch, at *kumkum.ray@mms.gov*, or at (703) 787–1604. For questions on technical issues, contact Jane Roberts, Leasing Division, at *jane.roberts@mms.gov*, or at (805) 389–7836.

SUPPLEMENTARY INFORMATION: This proposed rule completely rewrites the existing regulations at 30 CFR part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf (OCS). The major components of part 256 include: (1) The 5-Year Leasing Program mandated by section 18 of the OCS Lands Act, 43 U.S.C. 1344; (2) preparing for a lease sale; (3) issuing, maintaining, and ending a lease; and (4) bonding requirements. The MMS is proposing to reorganize and reorder the regulations

last rewritten in 1982 to reflect the leasing process more efficiently, as it has evolved over the past 26 years. This proposal would eliminate several sections of existing text as redundant or unnecessary. Redundant sections include subpart D, Joint Bidding, of 30 CFR part 260. We do not intend these proposed changes to alter existing requirements concerning joint bidders. Some new sections would standardize or clarify practices that may not have been uniform in all three OCS regional offices. A new section (§ 256.621) on lease term pipelines was added using the language in 30 CFR part 250, subpart J, final rule at § 256.62(g). Other sections clarify processes required by legislation, enacted since these regulations were last rewritten, such as the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, concerning pro rata liability for monetary obligations; or by recently promulgated regulations, such as the Department of the Interior's (DOI) non-procurement debarment rules. There are also changes that will assist MMS in meeting its stewardship responsibilities and its role as a regulator. Other changes include: (1) Stating in the rule at § 256.500(b) that for the purposes of an area-wide bond, ''area-wide'' refers to the limits of a planning area as defined and administered by MMS; and (2) information from lessees is now required to help assess bonding for decommissioning of OCS facilities and to assess other liabilities associated with decommissioning.

The MMS published a final rule in the **Federal Register** on September 12, 2008 (73 FR 52917), to implement section 104(c) of the Gulf of Mexico Energy Security Act of 2006 (GOMESA), Public Law 109–432. It was designated subpart N, §§ 256.90 through 256.95. We have redesignated subpart N to subpart I, §§ 256.900 through 256.905. We have added GOMESA definitions for Bonus or royalty credit, Central planning area, Coastline, Desoto Canyon OPD, Destin Dome OPD, Eastern planning area, and Pensacola OPD. We have included a table in § 256.401 for ease in determining what evidence MMS requires to qualify a bidder and/or lessee from various entities, including several additional business organizational forms that now exist in the offshore industry.

We propose to retain tables related to bonding for the same reason. The following derivation tables track the current regulations, section by section, to the proposed rule sections. Most of the proposed changes clarify regulatory language. The tables also list other reasons for changes.

DERIVATION TABLE FOR 30 CFR PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

Current regulations section	Proposed rule section	Nature of change
	250.1717(e)	New requirement for submission of expense information on plugging and abandonment.
	250.1729(d)	New requirement for submission of expense information on platform removal.
	250.1743(b)(8)	New requirement for submission of expense information on site clearance.

DERIVATION TABLE FOR 30 CFR PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

Current regulations section	Proposed rule section	Nature of change
Subpart A—Outer Continental Shelf Oil, Gas, and Sulphur Management, General.	Subpart A—General Provisions	Redesignated.
256.0	256.100(a)	Updated.
	256.101	New section.
256.1	256.102	Simplified.
256.2		Eliminated as unnecessary to state policy from the Act.
256.4		Eliminated as redundant to the Act.
256.5	256.103	Eliminated unnecessary terms.
256.7		Eliminated as unnecessary, as any cross-references are included in the appropriate section.
256.8	256.202	Simplified language.
256.10(a)	256.100(b)	Simplified language.
256.10(b) through (d)		Eliminated as repetitive with 30 CFR part 252.
256.11	256.630	Simplified language and reorganized.
256.12	256.206	Simplified language.
Subpart B—Oil and Gas Leasing Program.	Subpart B—Oil and Gas 5-Year Leasing Program.	Clarified name.
256.16	256.200–202	Simplified language and reorganized.
256.17	256.203–205	Simplified.
256.19	256.201	Simplified.
256.20	256.202(c)	Simplified.
Subpart C—Reports From Federal Agencies.		Eliminated as repetitive with the Act.
256.22.		
Subpart D—Call for Information and Nominations.	Subpart C—Preparing for a Lease Sale.	Reorganized, see below.
256.23	256.300	Reorganized.
256.25	256.302	Simplified.
Subpart E—Area Identification and Tract Size.	Subpart C—Preparing for a Lease Sale.	Reorganized in proposed subpart C.

DERIVATION TABLE FOR 30 CFR PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF—Continued

Current regulations section	Proposed rule section	Nature of change
256.26	256.301	Reorganized.
256.28	256.306	Reorganized.
Subpart F—Lease Sales	Subpart C—Preparing for a Lease Sale.	Reorganized in proposed subpart C.
256.29	256.303	Simplified.
256.31	256.304, 305	Reorganized.
256.32	256.306	Simplified language.
256.32(e)		Eliminated as relevant time period has passed.
Subpart G—Issuance of Leases	Subpart D—Issuance of a Lease.	Reorganized, see below.
256.35	256.400	Simplified language and reorganized.
256.35(c)	256.402(b), (c)	Simplified language and reorganized.
	256.402(a), 403	New sections to require compliance with new government-wide/DOI non-procurement debarment rules covering principals.
256.37(a), (b)	256.600,601	Simplified language, clarified terminology, and reorganized. The 5-year requirement codifies provision in Form MMS–2006 (12/87).
256.37(c)	256.602,603	
256.38		Eliminated as unnecessary section title.
256.40		Eliminated as redundant. Any definitions will be in § 256.103, Definitions.
256.41	256.411,412	Simplified and eliminated unnecessary language, reorganized.
256.41(d)	256.414	Simplified language.
256.43	256.411–413	Simplified language and reorganized.
256.43(a)		Eliminated unnecessary definitions.
256.44	256.402	Simplified language.
256.46(a), (b)	256.410	Simplified language.
256.46(c) through (g)	256.401	Simplified language, added detail for clarity, and included additional business organizational forms that exist offshore.
256.46(h)	256.402(b)	Simplified language.
	256.402(a), 403	New sections to require compliance with new government-wide/DOI non-procurement debarment rules covering transactions at tier below principals.
	256.404	New section with timeframe for notification of certain business changes to keep lease records accurate and up-to-date.
256.47	256.411(c), (d); 416; 420	Simplified language and eliminated some as unnecessary.
256.47(c)	256.416(c)	Simplified language and added two options with respect to high bids, if tied.
256.47(e)(1), (e)(3)	256.417	Simplified language and reorganized delegation of authority from the Secretary to the Director for reconsideration of rejected bids.
256.47(f)	256.420(b)	Clarified that deferred bonuses must be paid within 5 years per 43 U.S.C. 1337(a)(2).
256.47(g)	256.420(c)	Clarified that successful bidder may be held liable for full bid amount under certain circumstances.
256.49	256.420	Discussion of form for other minerals eliminated as redundant within 30 CFR part 281.
256.50	256.421	Simplified.
Subpart H—Rentals and Royalties [Reserved].		Eliminated as unnecessary as never used.
Subpart I—Bonding	Subpart E—Financial Accountability and Risk Management.	Reorganized, see below.
256.52	256.500	The MMS may adjust the amount of general bonds in the future by using the Implicit Price Deflator for Gross Domestic Product.
256.52(e)	256.521	Changed period for providing additional bond coverage from 6 months to 45 days.
256.52(f), (g)	256.502	Requires 115 percent of bond value if using Treasury securities to meet new value fluctuation requirements from Treasury Department.
256.53	256.501	Clarified minimum level of bond for specific activity.
256.53(d)	256.510	Separated provisions concerning supplemental bond from those concerning bond level changes due to leave activity. New provision to allow MMS to require demonstration of bond sufficiency.
256.54	256.503	Specified that the bond guarantees all non-monetary lease obligations.
	256.503(b)	New section to retain right to require electronic filing of bonds after 90-day notice.
	256.504	New section clarifies whose non-monetary lease obligations must be covered.
	256.505	New section clarifies lessee/operator bond.
256.55	256.520	Simplified.
256.56	256.512	Simplified.
256.57	256.511	Clarified language and eliminated imprecise use of term, indemnity.
256.58	256.522	Clarified and separated termination of period of liability and cancellation of a bond.

DERIVATION TABLE FOR 30 CFR PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF—Continued

Current regulations section	Proposed rule section	Nature of change
	256.523.	
256.59	256.524, 525	Reorganized.
256.59(e) and (g)	256.526.	
Subpart J—Assignments, Transfers, and Extension.	Subpart F—Maintaining a Lease	Reorganized, see below.
	256.605	New section to clarify obligations of record title owners.
	256.606	New section to clarify obligations of operating rights owners.
	256.610	New section to iterate statutory requirement for approval prior to sale, exchange, assignment or transfer of a lease.
256.62(a)	256.611	Simplified language and clarified that can disapprove assignment if assignor and/or assignee has unsatisfied obligations.
256.62(b)	256.412	Included in section on joint bidding.
256.62(c)	256.617	Simplified language.
256.62(d)	256.616	Simplified language.
256.62(e)	256.618	Simplified language.
256.62(f)	256.616	Simplified language.
256.62(g)	256.621	New section on lease term pipelines.
256.63	256.104	Redesignated in Subpart A.
256.64, 256.68	256.613	Reorganized and clarified.
256.64(a)	256.612	Clarified that subleases restricted to 2-depth levels.
256.64(a)(7)	256.620(a).	
256.64(a)(8)	256.620(b).	
256.64(e) through (h)	256.614.	
256.64(i)	256.619.	
256.65	256.612(b)	Reorganized and clarified.
256.67	256.614	Reorganized and clarified.
256.68	256.613(a)	Reorganized and clarified
256.70	256.601(a)	Reorganized and clarified.
256.71	256.601(b)	Reorganized and clarified.
256.72	256.601(c)	Reorganized and clarified.
	256.601(d)	New section to clarify effect of production from a unitized lease.
256.73	256.601(a)	Reorganized and clarified.
Subpart K—Termination of Leases	Subpart G—Ending a Lease	Reorganized, see below
	256.700	New section to clarify what happens if you do not take certain actions to maintain a lease.
256.76	256.701	Simplified.
256.77	256.702	Simplified.
Subpart L—Section 6 Leases		Eliminated as unnecessary repetition of 43 U.S.C. 1335(b). Leases of other minerals covered in 30 CFR part 281.
256.79, 256.80		
Subpart M—Studies		Eliminated as unnecessary recitation of internal procedures.
256.82		
	Subpart H [RESERVED].	
Subpart N—Bonus or Royalty Credits for Exchange of Certain Leases.	Subpart I—Bonus or Royalty Credits for Exchange of Certain Leases.	Redesignated.
256.90—256.95	256.900—256.905.	
Appendix A to part 256—Oil and Gas Cash Bonus Bid.		Eliminated as unnecessary repetition of bid form.

DERIVATION TABLE FOR 30 CFR PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING, SUBPART D

Current regulations section	Proposed rule section	Nature of change
Part 260—Outer Continental Shelf Leasing, Subpart D—Joint Bidding. 260.301–303	256.411	Removed subpart D from part 260. Proposed § 256.411 simplified language and eliminated duplicative provisions of current §§ 256.38–256.44.

Procedural Matters: Regulatory Planning and Review (Executive Order (E.O.) 12866)

This proposed rule is not a significant rule as determined by the Office of Management and Budget (OMB) and is not subject to review under E.O. 12866. This proposed rule primarily rewrites existing regulations that govern the offshore Federal leasing process for sulphur and oil and gas subject to the exclusive jurisdiction of the United States. The rule is rewritten in simple, clear language, and reorganized to reflect the steps in the leasing process as they have evolved. Minor changes are proposed to make certain practices uniform among the three OCS regional offices.

(1) This proposed rule would not have an effect of $100 million or more on the economy. It would not adversely affect in a material way the economy,

productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The proposed rule would rewrite 30 CFR part 256 in plain language, and would contain virtually the same reporting and recordkeeping requirements and attendant costs as the current regulations. A cost-benefit and economic analysis is not required.

(2) This proposed rule would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This proposed rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. Nominal user fees are not material in size or nature. The rule proposes a new fee for recording certain secondary lease interests, $27; continues existing fees for submitting non-required documents, $27; and for requesting an approval of the assignments or transfers of certain lease interests, $186.

(4) This proposed rule would not raise novel legal or policy issues. The rule largely rewrites existing regulations.

Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule would not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

This proposed rule would affect lessees and potential lessees, of which there are approximately 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) Code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. The MMS estimates that of the 130 lessees and operators that explore for and produce oil and gas on the OCS, approximately 90 are small businesses (70 percent).

The primary economic effect of this rule on small businesses would be the cost associated with information collection (IC) activities. The rule proposes to rewrite 30 CFR part 256 and would add three new requirements for 30 CFR part 250, subpart Q. The proposed rule contains virtually the same burden hour requirements and non-hour cost burdens as the current regulations. The changes in reporting requirements would not significantly increase the IC burden on respondents—large or small. The MMS estimates an annual increase of 2,396 hours in the paperwork burden from that imposed by the current regulations. There would also be one new $27 non-hour cost burden for recording certain secondary lease interests resulting in an annual increase of $18,900 ($27 × an estimated 700 filings). A Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Allegations of discrimination/retaliation filed with the Small Business Administration will be investigated for appropriate action.

Small Business Regulatory Enforcement Fairness Act

The proposed rule is not a major rule under 5 U.S.C. 804(2) the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Would not have an annual effect on the economy of $100 million or more.

b. Would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Would not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule does not have significant takings implications. The proposed rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of E.O. 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

Under the criteria in E.O. 13175, we have evaluated this proposed rule and determined that it has no potential effects on Federally recognized Indian tribes. There are no Indian or tribal lands in the OCS.

Paperwork Reduction Act (PRA) of 1995

The proposed rule contains a collection of information that is being submitted to OMB for review and approval under 44 U.S.C. 3501 *et seq.* As part of our continuing effort to reduce paperwork and respondent burdens, MMS invites the public and other Federal agencies to comment on any aspect of the reporting and recordkeeping burden. If you wish to comment on the Information Collection (IC) aspects of revised 30 CFR parts 250 and 256, you may send your comments directly to OMB (see the **ADDRESSES** section of this notice). Please identify your comments with Docket ID: MMS–2007–OMM–0069 in the subject line. Send a copy of your comments to the Regulations and Standards Branch (RSB), *Attn:* Comments; 381 Elden Street, MS–4024; Herndon, Virginia 20170–4817. You may obtain a copy of the supporting statement for the IC by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, an IC unless it displays a currently valid OMB

control number. The OMB is required to make a decision concerning the IC contained in these proposed regulations between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB received it by June 26, 2009. This does not affect the deadline for the public to comment to MMS on the proposed regulations.

The title of the IC for this proposed rule is 30 CFR Part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf, 30 CFR Part 250, Subpart Q, and 30 CFR Part 260, Outer Continental Shelf Oil and Gas Leasing. The MMS estimates there are approximately 130 respondents (Federal oil and gas or sulphur lessees and/or operators). Responses to this IC are required to obtain or retain a benefit and are mandatory. The frequency of response varies, but is primarily on occasion. The IC does not include questions of a sensitive nature. The MMS will protect proprietary information according to section 26 of the OCS Lands Act; 30 CFR 256.100(b) of the proposed regulation; the Freedom of Information Act (5 U.S.C. 552), its implementing regulations at 43 CFR part 2; and 30 CFR 250.197, Data and information to be made available to the public or for limited inspection.

This IC is a total rewrite of 30 CFR part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf and adds three new requirements to 30 CFR part 250, subpart Q, Decommissioning.

The IC required by the current 30 CFR part 250, subpart Q, Decommissioning, is approved under OMB Control Number 1010–0142. There are three new proposed requirements that affect subpart Q, for a total of 820 burden hours. The MMS will use the information collected for these proposed requirements to help MMS assess the abandonment liability for each lease. This abandonment liability will be used to set supplemental bond requirements for each operator, and these supplemental bonds are used to protect the Federal Government against defaults should an operator go into bankruptcy. When final regulations are promulgated, the IC burdens for the 30 CFR part 250, subpart Q requirements will be incorporated into its respective IC for that regulation (1010–0142, 17,991 burden hours, expiration 11/30/10).

The IC required by the current 30 CFR part 256 regulations is approved under OMB Control Number 1010–0006. There are several new requirements that will impose an additional 1,576 burden hours and $18,900 in non-hour cost burdens to the already approved hours under 1010–0006 (17,103 burden hours, $603,125 non-hour cost burdens, expiration 5/31/2010). The MMS will use the information collected under 30 CFR part 256 to determine if applicants are qualified to hold leases in the OCS. Specifically, MMS uses the information to:

- Verify the qualifications of a bidder on an OCS lease sale. Once the required information is filed with MMS, a qualification number is assigned to the bidder so that duplicate information is not required on subsequent filings.
- Develop the semiannual List of Restricted Joint Bidders. This identifies parties ineligible to bid jointly with each other on OCS lease sales, under limitations established by the Energy Policy and Conservation Act of 1975.
- Ensure the qualification of assignees and track operators on leaseholds. Once a lease is awarded, the transfer of a lessee's interest to another qualified party must be approved by an MMS regional director, regional supervisor, or regional manager (Pacific Region only). Also, a lessee may designate an operator to act on the lessee's behalf. This designation must be approved by MMS before the designated operator may begin operations.
- Document that a leasehold or geographical subdivision has been surrendered by the record title holder.
- Keep track of who owns which lease term pipeline since they are not currently documented on submitted information. Also, during the decommissioning process, if operators have changed since the beginning of the lease—decommissioning operations are worked between the companies. But, after all decommissioning activities are complete, if a safety hazard still remains, then MMS will need to know that the responsibility for compliance lies with the original operator.
- Update the corporate database that is used to determine what leases are available for a lease sale and the ownership of all OCS leases. Non-proprietary information is also publicly available from the MMS corporate database via the Internet.

The MMS also uses various forms relating to this subpart. The forms allow lessees to submit the required information in a standardized format that helps MMS process the data in a more timely and efficient manner. There are five forms associated with this IC, MMS–150, MMS–151, MMS–152, MMS–2028, and MMS–2028A. The first three forms are used for assignment purposes and the last two forms are used to hold the surety liable for the obligations and liability of the principal/lessee or operator.

The proposed rule imposes changes to the existing IC hour burdens. These changes are:

- Submit expense information on plugging and abandonment (+520 hours).
- Submit expense information on platform removal (+150 hours).
- Submit expense information on site clearance (+150 hours).
- Notify MMS if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment; request exception (+75 hours).
- Provide acceptable bond for payment of a deferred bonus (+¼ hour).
- Submit statement excluding payment obligations of co-lessee or designated operator (+1 hour).
- Submit report to MMS listing remaining lease term pipelines, including decommissioned pipelines on lease and indicate which pipelines remain as lease term (+1,500 hours).

When the rule becomes effective, the new collection will replace the current one for 30 CFR part 256.

On August 25, 2008 (73 FR 49943), we also updated cost recovery fees. Therefore, non-hour cost burdens have increased by $55,450.

We estimate the total combined (30 CFR parts 250 and 256) annual burden and non-hour cost burdens for this proposed rule to be 19,499 burden hours and $677,475 non-hour cost burdens. Therefore, the rule adds a net 2,396 burden hours and $18,900 non-hour cost burdens to the already approved IC burdens. Except for the items identified as NEW in the following chart, the burden estimates shown are those that are estimated for the current 30 CFR part 256 regulations. The public has had numerous opportunities to comment on the current estimates during the process to renew the OMB approval of the IC requirements in current regulations.

The following table details the IC burden for the proposed rulemaking requirements.

30 CFR part 250, subpart Q	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
NEW 250.1717(e)	NEW Submit expense information on plugging and abandonment.	1	520 responses	520
NEW 250.1729(d)	NEW Submit expense information on platform removal.	1	150 responses	150
NEW 250.1743(b)(8)	NEW Submit expense information on site clearance.	1	150 responses	150
Total			820 responses	820
Citation 30 CFR part 256*	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
		Non-Hour Cost Burdens		
Subparts A and B				
Subpart A 256.104	Service Fees	Fees covered individually throughout subpart.		0
Subpart B: 201; 202; 203; 204	Submit nominations, suggestions, and relevant information in response to request for comments on proposed 5-year leasing program, including information from States & local governments/industry/Federal agencies and others.	4	1 response	4
Subtotal			1 response	4
Subpart C				
300	Submit response to Calls for Information and Nominations on areas proposed for leasing in the 5-year program, including information from States/local governments.	4	1 response	4
304(a)	States or local governments submit comments/recommendations on size, timing, or location of proposed lease sale.	4	10 responses	40
Subtotal			11 responses	44
Subpart D				
400; 401	Establish company file for qualification; submit qualifications for lessee/bidder.	2	104 responses	208
NEW 402(a); 403	NEW Notify MMS if you or your principals are excluded, disqualified, or convicted of a crime—Federal non-procurement debarment and suspension system; request exception.	1.5	50	75
404	Notify MMS of all mergers, name changes, or change of business.	Requirement not considered IC under 5 CFR 1320.3(h)(1)		0
410	Submit bids and required information	5	2,000 bids	10,000
410(d); 417	Request reconsideration of bid decision	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
411(a)(2); 412	File statement or detailed report of production	2	100 responses	200
411(b)	Submit appeal due to restricted joint bidders list.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
414	Request exemption from bidding restrictions; submit appropriate information.	Requirement not considered IC under 5 CFR 1320.3(h)(9).		0
416(c)	Notify MMS of tie bid decision; file agreement to accept joint lease on tie bids.	3.5	2 agreements	7
420; 421	Execute lease (includes submission of evidence of authorized agent and request for dating of leases); submit supporting data.	1	852 leases	852
NEW 420(b)	NEW Provide acceptable bond for payment of a deferred bonus. We do not expect this to occur, hence minimal burden.	15 mins.	1 response	15 mins.

Citation 30 CFR part 256 *	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
Subtotal			3,109 responses	11,342 (rounded) hours
	Subpart E			
500(a); 501; 503;	Submit OCS Mineral Lessee's and Operator's Bond (Form MMS–2028), required information, and surety notifications.	.25	124 forms	31
501; 505; 510	Demonstrate financial worth/ability to carry out present and future financial obligations, request approval of another form of security, or request reduction in amount of supplemental bond required.	3.5	165 submissions	578 (rounded)
502	Provide U.S. Treasury securities or other types of security instruments, including authority for MMS to sell securities, relevant information, and related or subsequent actions.	2	10 submissions	20
NEW 504	NEW Submit statement excluding payment obligations of co-lessee(s) or designated operator(s).	1	1 exclusion statement	1
510	Submit OCS Mineral Lessee's and Operator's Supplemental Plugging and Abandonment Bond (Form MMS–2028A) w/required information; upon request, demonstrate sufficiency; request reduction.	.25	136 forms	34
511	Provide third-party indemnity; financial information/statements; additional bond info; executed guarantor agreement and supporting information/documentation.	19	45 submissions	855
511(c)(6); 522(b); 523	Notify MMS and others, and request MMS approval to terminate period of liability or cancel bond or other form of security.	½	378 requests	189
511(d); 520; 521; 522(b); 523(a)(2);.	Furnish replacement bond or provide alternate form of security. Burden included above with bond or alternate forms of security			0
512	Request approval to withdraw funds from RUE/ROW decommissioning account.	12	1 abandonment account	12
520	Notify MMS and others of bond lapse or action filed alleging lessee, surety, or guarantor is insolvent or bankrupt.	1	3 notices	3
525(b)	Provide information to demonstrate lease will be brought into compliance.	16	5 responses	80
Subtotal			868 responses	1,803
	Subpart F			
Subparts E and F: 501; 601; 603	Request approval for various operations or submit plans or applications. Burden included with other approved collections for 30 CFR Part 250 (1010–0114/subpart A, 1010–0151/subpart B, 1010–0141/subpart D, 1010–0142/subpart Q, and 1010–0149/subpart I)			0
Subpart F: 610; 611; 613(a); 614; 615; 617; 619.	File application and required information for assignment of record title interest (Form MMS–150) (includes sell, exchange, transfer); specify effective date.	1 hour	2,063 forms	2,063
		$186 fee × 2,063 forms = $383,718		
611; 612; 613(a); 614; 615; 617; 619.	File application and required information for assignment of operating interest (Form MMS–151) (includes sell, exchange, transfer); specify effective date.	1 hour	937 forms	937
		$186 fee × 937 forms = $174,282		
620(a)	File required instruments creating or transferring working interests, etc., for record purposes.	1 hour	700 filings	700
NEW FEE		NEW $27 fee × 700 filings = $18,900		

Citation 30 CFR part 256*	Reporting and recordkeeping requirements	Hour burden	Average number of annual responses	Annual burden hours
620(b)	Submit "non-required" documents, for record purposes that respondents want MMS to file with the lease document.	Accepted on behalf of lessees as a service, MMS doesn't require/need.		0
		$27 fee × 3,725 filings = $100,575		
NEW 256.621	NEW After assignment of lease or new designation of operator, submit report to MMS listing remaining Lease Term P/Ls, including decommissioned P/Ls, on lease; indicate which P/Ls remain as Lease Term P/Ls.	1	1,500 L/T P/L listing reports.	1,500
Subtotal			5,200 responses	5,200
			$677,475 non-hour cost burdens	
Subpart G				
701; 902(a)(5)	File Form MMS–152 to request relinquishment of lease.	1	240 relinquishment forms.	240
702	Comment on lease cancellation (MMS expects 1 in 10 years).	1	1 submission	1
Subtotal			241 responses	241
Subpart I				
902(a)	Request a bonus or royalty credit and submit supporting documentation.	1	30	30
905	Request approval to transfer bonus or credit to another party with supporting information.	1	15	15
Subtotal			45 responses	45
Total Burdens			10,295 Responses	19,499
			$677,475 Non-Hour Cost Burdens	

*A few sections in 30 CFR part 260 also contain references to IC requirements in 30 CFR part 256 that are detailed in this table.

The MMS specifically solicits comments on the following questions:

(1) Is the IC useful and necessary for MMS to perform its functions properly?

(2) Are the estimates of the burden hours of the IC reasonable?

(3) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(4) Is there a way to minimize the IC burden on those who respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology?

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the IC. With the exception of the two currently approved service fees—record title and/or operating rights (transfer), and non-required document filing fees—MMS has identified one new non-hour cost burden for $27, filing required instruments creating or transferring working interests (see the burden table). This fee would only be a requirement if respondents want to submit documents for record purposes to file with the lease document. We consider this a service to the respondent. We have identified no other non-hour paperwork cost burdens and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (a) Total capital and start-up cost component and (b) annual operation, maintenance, and purchase of services component. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and start-up costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (1) Before October 1, 1995; (2) to comply with requirements not associated with the IC; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. The MMS has analyzed this proposed rule under the criteria of the National Environmental Policy Act and 516 Departmental Manual 15. This proposed rule meets the criteria set forth in 516 Departmental Manual 2 (Appendix 1.10) for a Departmental "Categorical Exclusion" in that this proposed rule is "* * * of an administrative, financial, legal, technical, or procedural nature and whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis * * *." This proposed rule also meets the criteria set forth in 516 Departmental Manual 15.4(C)(1) for an MMS "Categorical Exclusion" in that its impacts are limited to administration, economic or technological effects. Further, the MMS has analyzed this

proposed rule to determine if it meets any of the extraordinary circumstances that would require an environmental assessment or an environmental impact statement as set forth in 516 Departmental Manual 2.3, and Appendix 2. The MMS concluded that this rule does not meet any of the criteria for extraordinary circumstances as set forth in 516 Departmental Manual 2 (Appendix 2).

Data Quality Act

In developing this proposed rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C § 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in E.O. 13211. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements.

30 CFR Part 256

Administrative practice and procedure, Continental shelf, Environmental protection, Government contracts, Intergovernmental relations, Oil and gas exploration, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Surety bonds.

30 CFR Part 260

Continental shelf, Government contracts, Mineral royalties, Oil and gas exploration, Public lands—mineral resources, Reporting and recordkeeping requirements.

Dated: May 11, 2009.

Ned Farquhar,

Acting Assistant Secretary—Land and Minerals Management.

For the reasons stated in the preamble, MMS proposes to amend 30 CFR parts 250, 256, and 260 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 31 U.S.C. 9701, 43 U.S.C. 1334.

2. Amend § 250.1717 by:

(A) Revising paragraphs (c) and (d), and

(B) Adding paragraph (e) to read as follows:

§ 250.1717 After I permanently plug a well, what information must I submit?

* * * * *

(c) Nature and quantities of material used in the plugs;

(d) If you cut and pull away any casing string, you must submit:

(1) A description of the methods used, including information on explosives used;

(2) Size and amount of casing removed; and

(3) Casing removed depth.

(e) Expenses of plugging and abandonment with supporting documentation.

3. Amend § 250.1729 by:

(A) Revising paragraphs (b) and (c), and

(B) Adding paragraph (d) to read as follows:

§ 250.1729 After I remove a platform or other facility, what information must I submit?

* * * * *

(b) A description of any mitigation measures you took;

(c) A statement signed by your authorized representative that certifies that the types and amount of explosives you used in removing the platform or other facility were consistent with those set forth in the approved removal application; and

(d) Expenses of removal of the platform or other approved decommissioning of the platform with supporting documentation.

3. Amend § 250.1743 by:

(A) Revising paragraphs (b)(6) and (b)(7), and

(B) Adding paragraph (b)(8) to read as follows:

§ 250.1743 How do I certify that a site is clear of obstructions?

* * * * *

(b) * * *

(6) The results of the survey, including a list of any debris removed or a statement from the trawling contractor that no objects were recovered;

(7) A post-trawling job plot or map showing the trawled area; and

(8) Expenses of site clearance with supporting documentation.

4. Revise part 256 to read as follows:

PART 256—LEASING OF SULPHUR OR OIL AND GAS AND BONDING REQUIREMENTS IN THE OUTER CONTINENTAL SHELF

Subpart A—General Provisions

Sec.
256.100 Information collection and proprietary information.
256.101 What are the consequences if I provide false information?
256.102 What does this part cover?
256.103 Definitions.
256.104 Service fees.

Subpart B—Oil and Gas 5-Year Leasing Program

256.200 What is the 5-year program?
256.201 Does MMS consult with interested parties while preparing the 5-year program?
256.202 How does MMS start the 5-year program preparation process?
256.203 What does MMS do before publishing a proposed program?
256.204 How do Governments and citizens comment on the proposed program?
256.205 What does MMS do before approving a final program or a significant revision?
256.206 Does MMS offer blocks in a sale that is not on the 5-year program schedule?

Subpart C—Preparing for a Lease Sale

256.300 What is a call for information?
256.301 What does MMS do with the information from the call?
256.302 What does MMS do if identified areas are within 3 miles of the seaward boundary of a coastal State?
256.303 What happens with an approved proposed notice of sale?
256.304 What role do affected States have?
256.305 What does MMS do with comments and recommendations received on the proposed notice?
256.306 How does MMS conduct a lease sale?

Subpart D—Issuance of a Lease

Qualifications

256.400 Who may become a lessee?
256.401 How do I show that I am qualified to be a lessee?
256.402 Who may not become a lessee or acquire an interest in a lease?
256.403 What do the non-procurement debarment rules require that I do?
256.404 When must I notify MMS of mergers, name changes, or changes of business form?

How To Bid

256.410 How do I submit a bid?

Restrictions on Joint Bidding

256.411 Are there restrictions on bidding with others and do they affect my ability to bid?
256.412 When must I file a statement of production?
256.413 How do I determine my production for purposes of the restricted joint bidders list?
256.414 Are exemptions from the bidding restrictions possible?

How Does MMS Act on Bids?

256.416 What does MMS do with my bid?
256.417 What may I do if my bid is rejected?

Awarding the Lease

256.420 What happens if I am the successful high bidder?
256.421 When is my lease effective?

Subpart E—Financial Accountability and Risk Management

General Bonds

256.500 What security must I provide when I obtain my lease?
256.501 Do my general bonding requirements change as activities progress on my lease?
256.502 What instruments other than a surety bond may I use to provide the required security?
256.503 What general requirements must my bond or other security meet?
256.504 Must my surety bond cover the payment obligations of my co-lessees and designated operators?
256.505 What happens if my co-lessees or designated operators exclude my payment obligations from their bond?

Supplemental Bonds

256.510 Can MMS require that I post a supplemental bond?
256.511 May I use a third-party guaranty to meet the supplemental bonding requirement?
256.512 May I use a lease, right-of-way (ROW), or right-of-use and easement (RUE)-specific decommissioning account to meet the supplemental bonding requirement?

Changes in Bonding or Security

256.520 What do I do if my bond lapses?
256.521 What happens if the value of my bond or other security is reduced?
256.522 What happens if my surety wants to terminate the period of liability of my bond?
256.523 What happens if my surety wants to cancel my bond?
256.524 Why might MMS call for forfeiture of my bond?
256.525 How will I know about this forfeiture?
256.526 What if correcting my default requires a change in the amount of my bond?

Subpart F—Maintaining a Lease

Initial Period of a Lease

256.600 What is the initial period of my oil and gas lease?
256.601 How may I maintain my oil and gas lease beyond the initial period?
256.602 What is the initial period of my sulphur lease?
256.603. How may I maintain my sulphur lease beyond the initial period?

Lease Obligations

256.605 What are my obligations as a record title holder?
256.606 What are my rights and obligations as an operating rights owner?

Transferring Interest in All or Part of a Lease

256.610 May I sell, exchange, assign, or otherwise transfer my lease?
256.611 May I assign all or part of my lease interest?
256.612 May I assign operating rights?
256.613 How do I seek approval of an assignment?
256.614 How do I transfer the interest of a deceased leaseholder?
256.615 What if I want to assign interests in more than one lease at the same time?
256.616 What is the effect of an assignment on an assignor's liability?
256.617 May I specify an effective date of the assignment?
256.618 What is the effect of an assignment on an assignee's liability?
256.619 As a restricted joint bidder, may I assign interest to another restricted joint bidder?
256.620 Are there any interests I may assign without MMS approval?
256.621 What reports must I submit for lease term pipelines when MMS approves a lease assignment?

Helium

256.630 What must a lessee do if MMS elects to extract helium from a lease?

Subpart G—Ending a Lease

256.700 How does a lease end?
256.701 May I end the lease myself?
256.702 Will MMS end my lease?

Subpart H—[Reserved]

Subpart I—Bonus or Royalty Credits for Exchange of Certain Leases

256.900 Which leases may I exchange for a bonus or royalty credit?
256.901 How much bonus or royalty credit will MMS grant in exchange for a lease?
256.902 What must I do to obtain a bonus or royalty credit?
256.903 How is the bonus or royalty credit allocated among multiple lease owners?
256.904 How may I use the bonus or royalty credit?
256.905 How do I transfer a bonus or royalty credit to another person?

Authority: 31 U.S.C. 9701, 42 U.S.C. 6213, 43 U.S.C. 1334, Pub. L. 109–432.

Subpart A—General Provisions

§ 256.100 Information collection and proprietary information.

(a) *Information collection (IC).* (1) The Office of Management and Budget (OMB) approved the collection of information under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Number 1010–xxxx. The title of this IC is 30 CFR part 256, Leasing of Sulphur or Oil and Gas and Bonding Requirements in the Outer Continental Shelf and 30 CFR part 260, Outer Continental Shelf Oil and Gas Leasing. The MMS collects the information to determine if applicants seeking to obtain a lease on the Outer Continental Shelf (OCS) are qualified to hold such a lease and can meet the monetary and non-monetary requirements of a lease. Responses to this collection are required to obtain or retain a benefit or are mandatory under 43 U.S.C. 1331 *et seq.* The MMS will protect proprietary information collected according to section 26 of the OCS Lands Act (OCSLA), 43 U.S.C. 1352, and this section.

(2) The Paperwork Reduction Act of 1995 requires us to inform the public that an agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(3) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the IC Clearance Officer, Minerals Management Service, Mail Stop 5438, 1849 C Street, NW., Washington, DC 20240.

(b) *Proprietary information.* Specific indications of interest in an area by industry received in response to a Call

for Information issued by the Secretary is proprietary information.

(1) The MMS will handle requests for indications of interest in an area and any other proprietary or privileged information you submit, according to the regulations in 43 CFR part 2.

(2) Upon request, MMS will provide relative summary indications of interest in areas to a Call for Information for a proposed sale.

§ 256.101 What are the consequences if I provide false information?

Under 18 U.S.C. 1001, it is a crime to knowingly and willfully make any false, fictitious, or fraudulent statements or representations to any U.S. governmental entity regarding any matter within its jurisdiction.

§ 256.102 What does this part cover?

These regulations establish the procedures the Secretary of the Interior and MMS will use to administer a leasing program for minerals on the submerged lands of the OCS, under the OCSLA, 43 U.S.C. 1331 *et seq.*

§ 256.103 Definitions.

As used in this part, the term:

Act means the OCS Lands Act as amended (43 U.S.C. 1331 *et seq.*).

Affected State means, with respect to any program, plan, lease sale, or other activity, proposed, conducted, or approved pursuant to the provisions of the Act, any State:

(1) The laws of which are, pursuant to section 4(a)(2) of the Act, 43 U.S.C. 1333(a)(2), to be the law of the United States for the portion of the OCS on which such activity is, or is proposed to be, conducted;

(2) Which is, or is proposed to be, directly connected by transportation facilities to any artificial island or structure referred to in section 4(a)(1) of the Act, 43 U.S.C. 1333(a)(1);

(3) Which is receiving, or in accordance with the proposed activity will receive, oil for processing, refining, or transshipment which was extracted from the OCS and transported directly to such State by means of vessels or by a combination of means including vessels;

(4) Which is designated by the Secretary of the Interior as a State in which there is a substantial probability of significant impact on or damage to the coastal, marine, or human environment; or a State in which there will be significant changes in the social, governmental, or economic infrastructure, resulting from the exploration, development, and production of oil and gas anywhere on the OCS; or

(5) In which the Secretary of the Interior finds that because of such activity, there is, or would be, a significant risk of serious damage to the marine or coastal environment in the event of any oil spill, blowout, or release of oil or gas from vessels, pipelines, or other transshipment facilities due to factors such as prevailing winds and currents.

Bidding Unit means portions of two or more blocks combined for bidding purposes that may be bid upon as a single administrative unit and will become a single lease. The term tract, as defined in this section, may also be used.

Bonus or royalty credit means a legal instrument or other written documentation, or an entry in an account managed by the Secretary that a bidder or lessee may use in lieu of any other monetary payment for—

(1) A bonus due for a lease on the OCS; or

(2) A royalty due on oil or gas production from any lease located in the Gulf of Mexico.

Central planning area means the Central Gulf of Mexico Planning Area of the OCS, as designated in the document entitled, ''Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,'' dated February 2006.

Coastal environment means the physical, atmospheric, and biological components, conditions, and factors that interactively determine the state, condition, and quality of the terrestrial ecosystem from the shoreline inward to the boundaries of the coastal zone.

Coastal zone means the coastal waters (including the lands therein and thereunder) and the adjacent shorelands (including the water therein and thereunder), strongly influenced by each other and in proximity to the shorelines of several coastal States, and includes islands, transition and intertidal areas, salt marshes, wetlands, and beaches, whose zone extends seaward to the outer limit of the U.S. territorial sea and extends inland from the shore lines to the extent necessary to control shorelands; the uses of which have a direct and significant impact on the coastal waters, and the inward boundaries of which may be identified by several coastal States, under section 305(b)(1) of the Coastal Zone Management Act (CZMA) of 1972, 16 U.S.C. 1454(b)(1).

Coastline means the line of ordinary low water along that portion of the coast in direct contact with the open sea and the line marking the seaward limit of inland waters.

Desoto Canyon OPD means the official protraction diagram designated as Desoto Canyon which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,346,400 in the North American Datum of 1927 (NAD 27).

Destin Dome OPD means the official protraction diagram designated as Destin Dome which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,393,920 in the NAD 27.

Director means the Director of MMS of the U.S. Department of the Interior, or an official authorized to act on the Director's behalf.

Eastern planning area means the Eastern Gulf of Mexico Planning Area of the OCS, as designated in the document entitled ''Draft Proposed Program Outer Continental Shelf Oil and Gas Leasing Program 2007–2012,'' dated February 2006.

General bond means a bond with the amount fixed by regulations. The amount of the bond required is determined by the level of activity on the lease, right-of-way, or right-of-use and easement.

Human environment means the physical, social, and economic components, conditions, and factors that interactively determine the state, condition, and quality of living conditions, employment, and health of those affected, directly or indirectly, by activities occurring on the OCS.

Marine environment means the physical, atmospheric, and biological components, conditions, and factors which interactively determine the productivity, state, conditions, and quality of the marine ecosystem, including the waters of the high seas, the contiguous zone, transitional and intertidal areas, salt marshes, and wetlands within the coastal zone and on the OCS.

Mineral means oil, gas, and sulphur; it also includes sand, gravel, and salt used to facilitate the development and production of oil, gas, or sulphur.

OCS means the Outer Continental Shelf, as that term is defined in section 2(a) of the Act, 43 U.S.C. 1331(a).

Pensacola OPD means the official protraction diagram designated as Pensacola which has a western edge located at the universal transverse mercator (UTM) X coordinate 1,393,920 in the NAD 27.

Person means, in addition to a natural person, an association, a State, a political subdivision of a State, or a private, public, or municipal corporation.

Secretary means the Secretary of the Interior or a designated employee.

Supplemental bond means a bond required by MMS based upon potential lease decommissioning liabilities and/or other lease obligations that exceed the general bond.

Tract means an area of the OCS that is offered for sale as a single lease. The area may be a whole block, a portion of a block, or combined portions from multiple blocks. The term bidding unit, as defined previously, may also be used.

We, us, and *our* means the Minerals Management Service (MMS) of the Department of the Interior.

You means a lessee, the holder or owner of operating rights, a designated operator or agent of the lessee(s), a right of use and easement holder, State or Federal, and a pipeline right-of-way holder.

§ 256.104 Service fees.

(a) The table in this paragraph shows the fees that you must pay to MMS for the services listed. The fees will be adjusted periodically according to the Implicit Price Deflator for Gross Domestic Product by publication of a document in the **Federal Register**. If a significant adjustment is needed to arrive at the new actual cost for any reason other than inflation, then a proposed rule containing the new fees will be published in the **Federal Register** for comment.

SERVICE FEE TABLE

Service—processing of the following:	Fee amount	30 CFR citation
(1) Assignment of record title or operating rights (transfer) for MMS approval	$186	§ 256.613
(2) Required document filing for record purpose, but not for MMS approval	27	§ 256.620(a)
(3) Non-required document filing for record purposes	27	§ 256.620(b)

(b) Payment of the fees listed in paragraph (a) of this section must accompany the submission of the document for approval or filing, or be sent to an office identified by the Regional Director. Once a fee is paid, it is nonrefundable, even if your service request is withdrawn. If your request is returned to you as incomplete, you are not required to submit a new fee with the amended submission.

Subpart B—Oil and Gas 5-Year Leasing Program

§ 256.200 What is the 5-year program?

Section 18(a) of the Act, 43 U.S.C. 1344(a), requires the Secretary to prepare an oil and gas leasing program that consists of a 5-year schedule of proposed lease sales to best meet national energy needs, showing the size, timing, and location of leasing activity as precisely as possible. The MMS prepares the schedule to obtain the proper balance between the potential for environmental damage, the potential for discovery of oil and gas, and the potential for adverse impact on the coastal zone.

§ 256.201 Does MMS consult with interested parties while preparing the 5-year program?

In preparing the 5-year program, MMS will consult with States and local governments, industry, and any other interested parties, primarily through public notice and comment procedures, as described in the sections that follow.

§ 256.202 How does MMS start the 5-year program preparation process?

To begin preparation of the 5-year leasing program, MMS invites and considers nominations for any areas to be included or excluded from leasing, by doing the following:

(a) The MMS prepares and makes public, official protraction diagrams and leasing maps of OCS areas. Any area properly included on the official 5-year diagrams and maps may be offered for lease for any mineral not already leased.

(b) The MMS invites and considers any other suggestions and relevant information from Governors of affected States, local Governments, industry, Federal agencies, and other interested parties, through a publication of a request for information in the **Federal Register**. Local Governments must first submit their comments to their State Governor, before sending them to MMS.

(c) The MMS sends letters to the Governor of each affected State asking them to identify specific laws, goals, and policies that we should consider. We ask each State Governor as well as the Department of Commerce to identify the relationship between any oil and gas activity and the State coastal zone management program under sections 305 and 306 of the CZMA, 16 U.S.C. 1454 and 1455. The MMS will consider the coastal zone management program being developed or administered by an affected State under the CZMA.

(d) The MMS asks the Department of Energy for information on regional and national energy markets, OCS production goals, and transportation networks.

§ 256.203 What does MMS do before publishing a proposed program?

After considering the solicited comments and information described in § 256.202, we prepare a proposed leasing program.

(a) At least 60 days before publication of a proposed program, we send a draft of the proposed program to the Governor of each affected State, who may solicit comments from local Governments that may be affected by the proposed program.

(b) The MMS replies in writing to any comment from a Governor that is received at least 15 days before submission of the proposed program to Congress and its publication for comment in the **Federal Register**.

§ 256.204 How do Governments and citizens comment on the proposed program?

The MMS publishes the proposed program in the **Federal Register** for comment by the public. At the same time, we send the proposed program to the Governors of the affected States and to Congress and the Attorney General for review and comment.

(a) Governors are responsible for providing a copy of the proposed program to affected local Governments in their State. Local Governments may comment directly to us, but must also send their comments to the Governor of their State.

(b) All comments from any party are due within 90 days after publication in the **Federal Register**.

§ 256.205 What does MMS do before approving a final program or a significant revision?

At least 60 days before approval, we submit a proposed final program or significant revision to the President and Congress. The MMS also submits any comments received and explains the reasons why we did not accept any specific recommendation of the Attorney General, or of a State or local Government.

§ 256.206 Does MMS offer blocks in a sale that is not on the 5-year program schedule?

(a) The MMS may offer blocks within a planning area included in the 5-year program in an otherwise unscheduled sale, if the block either:

(1) Received a bid that was rejected in an earlier sale;

(2) Had a high bid that was forfeited in a scheduled sale; or

(3) Is a development block subject to drainage.

(b) For an unscheduled sale, we may disclose the classification of the block as a development block. However, blocks in the Central or Western Gulf of Mexico (GOM) planning areas cannot be offered in a sale that is not on the schedule.

Subpart C—Preparing for a Lease Sale

§ 256.300 What is a call for information?

The MMS issues a call for information on areas proposed for leasing in the 5-year program, through publication in the **Federal Register** and other publications as desired. A call may include more than one proposed sale. We request comments on:

(a) Industry interest in the areas proposed for leasing;

(b) Geological conditions, including bottom hazards;

(c) Archaeological sites on the seabed or near shore;

(d) Multiple uses of the proposed leasing area including navigation, recreation, and fisheries;

(e) Other socioeconomic, biological, and environmental information; and

(f) Industry's nominations or indications of interest in specific blocks within areas proposed for leasing in the 5-year program for each sale.

§ 256.301 What does MMS do with the information from the call?

In consultation with appropriate Federal agencies, we develop a proposal to recommend areas to the Secretary for further consideration for leasing and environmental analysis.

(a) The MMS considers all available environmental information, conflicts with other uses, resource potential, industry interest, and other relevant information, including comments received from State and local Governments and other interested parties in response to the call.

(b) The MMS evaluates the area identified for further consideration for the potential effects of leasing on the human, marine, and coastal environments, and to develop measures to mitigate adverse impacts for all the options to be analyzed. We inform the public of any additions or deletions from the area proposed for leasing in the 5-year program that result from the call process.

(c) The MMS prepares appropriate documentation under the National Environmental Policy Act (NEPA).

§ 256.302 What does MMS do if identified areas are within 3 miles of the seaward boundary of a coastal State?

For areas proposed for leasing that are within 3 geographical miles seaward of the seaward boundary of a coastal State, as defined in and governed by section 1337(g)(2) of the Act, we provide the Governor of the coastal State, pursuant to the confidentiality requirements in part 251 of this chapter, the following:

(a) A schedule for leasing;

(b) All geographical, geological, and ecological characteristics of the areas proposed for leasing;

(c) An estimate of the oil and gas resources; and

(d) An identification of any field, geological structure, or trap that lies within 3 miles of the State's seaward boundary.

§ 256.303 What happens with an approved proposed notice of sale?

The MMS sends an approved proposed notice of sale to the Governors of affected States and publishes the notice of its availability in the **Federal Register**. The notice includes appropriate stipulations and conditions to mitigate potential adverse impacts on the environment, the Director's findings, and all comments and recommendations received on the proposal.

§ 256.304 What role do affected States have?

(a) Within 60 days after receiving the proposed notice of sale, Governors of affected States may submit comments and recommendations to MMS regarding the size, timing, and location of the proposed sale. Local Governments may comment to us directly, but must also send their comments to the Governor of their State.

(b) The MMS will provide a consistency determination to affected States that will indicate whether the proposed sale is consistent, to the maximum extent practicable, with the enforceable policies of the applicable coastal zone management programs.

§ 256.305 What does MMS do with comments and recommendations received on the proposed notice?

The MMS considers all comments and recommendations received in response to the proposed notice of sale. We accept comments and recommendations from States and local Governments if we determine, after providing opportunity for consultation, that they provide for a reasonable balance between the national interest and the well being of the citizens of the State or locality. We send to each Governor written reasons for rejecting or adopting alternatives on how to address that Governor's recommendations.

§ 256.306 How does MMS conduct a lease sale?

(a) The MMS publishes a final notice of sale in the **Federal Register** and in other publications, as appropriate, at least 30 days before the date of the sale. The notice:

(1) States the place, time, and method for filing bids and the place, date, and hour for opening bids; and

(2) Contains or references a description of the area offered for lease and any stipulations, terms, and conditions of the sale.

(b) Tracts are offered for lease by competitive sealed bid in accordance with the terms and conditions in the final notice of sale and applicable laws and regulations. Tracts comprise an area not exceeding 5,760 acres, unless we find that a larger area is necessary for reasonable economic production.

Subpart D—Issuance of a Lease

Qualifications

§ 256.400 Who may become a lessee?

You may become a lessee if you are:

(a) A citizen or national of the U.S.;

(b) An alien lawfully admitted for permanent residence in the U.S., as defined in 8 U.S.C. 1101(a)(20);

(c) A private, public, or municipal corporation organized under the laws of any State of the U.S., the District of Columbia, or any territory or insular possession subject to U.S. jurisdiction;

(d) An association of such citizens, nationals, resident aliens, or corporations;

(e) A State; or

(f) A political subdivision of States.

§ 256.401 How do I show that I am qualified to be a lessee?

(a) Provide your MMS qualification number if you have qualified with us, in which case you will not need to provide the information in paragraph (b) or (c) of this section, unless we require it.

(b) An individual must submit a written statement of citizenship status attesting to U.S. citizenship. It need not be notarized nor give the age of the individual. A resident alien must submit an original or a photocopy of the Immigration and Naturalization Service form evidencing legal status of the resident alien.

(c) A corporation, association, or other entity must submit evidence (refer to the

table in paragraph (d) of this section) acceptable to MMS that:

(1) It is qualified to hold mineral leases under this subpart;

(2) It is authorized to conduct business under the laws of its State;

(3) It is authorized to hold mineral leases in the OCS under the operating rules of its business; and

(4) The persons holding the titles listed are authorized to bind the corporation or association when conducting business with us.

(d) Acceptable evidence under paragraph (c) of this section includes, but is not limited to:

Requirements to qualify as a lessee to hold leases in the OCS:	Corp.	Ltd. prtnsp.	Gen. prtnsp.	LLC	Trust
(1) Certified statement by Secretary, over corporate seal, certifying that the corporation is authorized to hold OCS leases	XX				
(2) Evidence of authority of titled positions to bind corporation, certified by Secretary, over corporate seal, including the following:	XX				
(i) Certified copy of resolution of the board of directors with titles of officers authorized to bind corporation.					
(ii) Certified copy of resolutions granting corporate officer authority to issue a power of attorney.					
(iii) Certified copy of power of attorney or certified copy of resolution granting power of attorney.					
(3) Certificate of partnership or organization paperwork registering with the appropriate State official		XX	XX	XX	
(4) Copy of articles of partnership or organization evidencing filing with appropriate Secretary of State, certified by Secretary of partnership or is a member or manager of a LLC		XX	XX	XX	
(5) Certificate evidencing State where partnership or LLC is registered. Statement of authority to hold OCS leases, certified by Secretary *OR* original paperwork registering with the appropriate State official		XX	XX	XX	
(6) Statements from each partner or LLC member indicating the following:		XX	XX	XX	
(i) If a corporation or partnership, statement of State of organization and authorization to hold OCS leases, certified by Secretary over corporate seal, if a corporation.					
(ii) If an individual, a statement of citizenship.					
(7) Statement from general partner, certified by Secretary that:		XX			
(i) Each individual limited partner is a U.S. citizen and;					
(ii) Each corporate limited partner or other entity is incorporated or formed and organized under the laws of a U.S. State or territory.					
(8) Evidence of authority to bind partnership or LLC, if not specified in partnership agreement, articles of organization, or LLC regulations, i.e., certificates of authority from Secretary reflecting authority of officers		XX	XX	XX	
(9) Listing of members of LLC certified by Secretary or any member or manager of LLC				XX	
(10) Copy of trust agreement or document establishing the trust and all amendments, properly certified by the trustee with reference to where the original documents are filed					XX
(11) Statement indicating the law under which the trust is established and that the trust is authorized to hold OCS leases					XX

§ 256.402 Who may not become a lessee or acquire an interest in a lease?

You may not become a lessee or acquire an interest in a lease if:

(a) You or your principals are excluded or disqualified from participating in transactions covered by the Federal non-procurement debarment and suspension system (2 CFR parts 180 and 1400), unless MMS explicitly has approved an exception for this transaction;

(b) You or your principals fail to meet or exercise due diligence under section 8(d) of the Act, 43 U.S.C. 1337(d) on any other OCS lease; or

(c) The MMS determines after notice and opportunity for a hearing under 30 CFR part 290, subpart A, that your operating performance is unacceptable under 30 CFR part 250 on any other OCS lease.

§ 256.403 What do the non-procurement debarment rules require that I do?

You must comply with the Department of the Interior's non-procurement debarment regulations at 2 CFR parts 180 and 1400.

(a) You must notify MMS if you know that you or your principals are excluded, disqualified, or convicted of crime as described in 2 CFR part 180 subpart I. You must make this notification before you sign a lease, assignment of record title interest, or transfer (assignment) of operating rights interest; or become a lease or unit operator. This paragraph does not apply if you have previously provided a statement disclosing this information, and we have received an exception from the Department of the Interior as described in 2 CFR 180.135.

(b) If you wish to enter into a covered transaction with another person at the next lower tier, you must first:

(1) Verify that the person is not excluded or disqualified under the requirements in 2 CFR part 180; and

(2) Require the person to:

(i) Comply with this subpart; and

(ii) Include the obligation to comply with this subpart in their contracts and other transactions.

(c) After you enter into a covered transaction, you must immediately notify MMS in writing if you learn that:

(1) You failed to disclose information earlier; or

(2) Due to changed circumstances, you or your principals now meet any of the criteria in 2 CFR 180.800.

§ 256.404 When must I notify MMS of mergers, name changes, or changes of business form?

You must immediately notify us of any merger, name change, or change of business form. The latest you may make this notification is 1 year after the earliest effective date or the date of filing the change or action with the Secretary of the State or other authorized official in the State of original registry.

How to Bid

§ 256.410 How do I submit a bid?

(a) You must submit a separate sealed bid for each tract or bidding unit to the address provided and by the time specified in the notice of sale. You may not bid on less than an entire tract or bidding unit.

(b) You must include a deposit to cover all bids submitted. The notice of sale specifies the amount and method of payment.

(c) You may not submit a bid on an OCS lease if, after notice and hearing under 30 CFR part 290, the Secretary finds that you are not meeting the diligence requirements on any other OCS lease.

(d) If your high bid is rejected, then the decision of the authorized officer on bids must be the final decision of the Department, subject only to reconsideration by the Secretary, upon your written request as set out in § 256.417.

Restrictions on Joint Bidding

§ 256.411 Are there restrictions on bidding with others and do they affect my ability to bid?

The Energy Policy and Conservation Act of 1975, 42 U.S.C. 6213, prohibits joint bidding by major oil and gas producers under the following circumstances:

(a) The MMS publishes a restricted joint bidders list twice yearly in the **Federal Register**. Persons appearing on this list are limited in their ability to submit joint bids (see paragraph (c) of this section). The list:

(1) Consists of the persons chargeable with an average worldwide daily production in excess of 1.6 million barrels of crude oil, liquefied petroleum products, or the Btu equivalent in natural gas, for the prior production period; and

(2) Is based upon the statement of production that you must file as required by § 256.412.

(b) If we place you on the restricted joint bidders list, we will send you a copy of the order placing you on the list. You may appeal this order to the Interior Board of Land Appeals under 30 CFR part 290, subpart A.

(c) If you are listed in the **Federal Register** in any group of restricted bidders, you may not bid:

(1) Jointly with another person in any other group of restricted bidders for the applicable 6-month bidding period; or

(2) Separately during the 6-month bidding period if you have an agreement with another restricted bidder that would result in joint ownership in an OCS lease.

(d) As a bidder, you are prohibited from unlawful combination with, or intimidation of, bidders under 18 U.S.C. 1860.

§ 256.412 When must I file a statement of production?

(a) You must file a statement of production if you had an average worldwide daily production of over 1.6 million barrels for the prior production period (determine your production using the method in § 256.413). Your statement must specify that you were chargeable with an average daily production in excess of 1.6 million barrels for the prior production period.

(b) The prior production periods are as follows:

For the bidding period of . . .	The prior production period is the preceding . . .
(1) May through October,	July through December.
(2) November through April,	January through June.

(c) You must file the statement of production by the following deadlines:

For the bidding period of . . .	You must file the statement by . . .
(1) May through October,	March 17.
(2) November through April,	September 17.

(d) If you file a statement of production, MMS may require you to submit a detailed report of production.

(1) The detailed report must list crude oil, liquefied petroleum products, or Btu equivalent in natural gas chargeable for the prior production period.

(2) You must submit this report within 30 days after receiving the MMS request.

(3) The MMS may inspect and copy such documents, records of production, analyses, and other material to verify the accuracy of any earlier statements of production.

(e) If you submit a statement of production that misrepresents your chargeable production, we may cancel any of your leases that were awarded in reliance upon such statement.

§ 256.413 How do I determine my production for purposes of the restricted joint bidders list?

(a) To determine the amount of production chargeable to you, add together:

(1) Your average daily production in barrels of crude oil, liquefied petroleum products, or the Btu equivalent in natural gas worldwide; and

(2) Your proportionate share of the average daily production owned by any entity which has an interest in you as the reporting person, and in which you have an interest.

(b) For the purpose of this section, *average daily production* includes production owned by:

(1) You;

(2) Every subsidiary of yours;

(3) Every person of which you are a subsidiary; and

(4) Every subsidiary of any person of which you are a subsidiary.

(c) For purposes of this section, *interest* means at least 5 percent ownership or control of you or the reporting person and includes any interest:

(1) From ownership of securities or other evidence of ownership; or

(2) By participation in any contract, agreement, or understanding regarding control of the person or their production of crude oil, liquefied petroleum products, or the Btu equivalent in natural gas.

(d) For purposes of this section, *entity* means a person that meets both of the following criteria:

(1) The entity is, in addition to a natural person, a corporation, partnership, association, joint-stock company, trust, fund, or any receiver, trustee in bankruptcy, or similar official acting for such a company; and

(2) Fifty (50) percent or more of the entity's stock or other interest having power to vote for the election of a controlling body, such as directors or trustees, is directly or indirectly owned, controlled, or held with the power to vote by another person.

§ 256.414 Are exemptions from the bidding restrictions possible?

The MMS may exempt you from the bidding restrictions if, after an opportunity for a hearing, we find that extremely high costs in an area would preclude exploration and development without an exemption.

How Does MMS Act on Bids?

§ 256.416 What does MMS do with my bid?

(a) The MMS opens the sealed bids at the place, date, and hour specified in

the notice of sale for the sole purpose of publicly announcing and recording the bids. We do not accept or reject any bids at that time.

(b) The MMS accepts or rejects all bids within 90 days, although we may extend that time if necessary. We reserve the right to reject any and all bids, regardless of the amount offered. If your bid is rejected, we will refund any money deposited with your bid plus any interest accrued.

(c) If the highest bids are tied, MMS will notify the tied bidders. Within 15 days after notification, the tied bidders may agree to accept the lease jointly, if not otherwise prohibited from bidding together. The tied bidders must notify MMS of their decision and submit a copy of their agreement to accept the lease jointly. Or, they may decide between themselves which bidder(s) will become the lessee, and notify MMS of their decision. If there is no such agreement, we will award the lease to the high bidder selected by lot.

(d) The MMS offers the Attorney General the opportunity to review the results of the sale before we accept the bids and issue the leases.

§ 256.417 What may I do if my bid is rejected?

You may ask MMS in writing for reconsideration within 15 days of bid rejection. You will receive a written response either affirming or reversing the rejection.

Awarding the Lease

§ 256.420 What happens if I am the successful high bidder?

If you are the successful bidder, you will receive the appropriate number of copies of the lease on a form approved by MMS.

(a) When you receive the lease copies, within 11-business days after receipt, you must:

(1) Execute the lease;

(2) Pay the first year's rental;

(3) Pay the balance of the bonus, unless deferred under (b) below; and

(4) File a bond under subpart E of this part.

(b) If provided for in the notice of sale, we may defer any part of the bonus payment for up to 5 years after the sale according to a schedule included in the notice of sale. You must provide a bond acceptable to us for payment of a deferred bonus.

(c) If you do not execute and return the lease within 11 business days after receipt, or if you otherwise fail to comply with applicable regulations, your deposit will be forfeited and MMS may take appropriate action to collect the full amount bid, if so provided for in the notice of sale. However, we will return any deposit with interest if the tract is withdrawn from leasing before you execute the lease.

(d) If you use an agent to execute the lease, you must include evidence with the executed copies of the lease form that you authorized the agent to act for you. After you comply with all requirements in this section, and after we have executed the lease, we will send you an executed copy.

§ 256.421 When is my lease effective?

Your lease is effective on the first day of the month following the date that MMS executes the lease. You may request in writing, before we execute the lease, that your lease be effective as of the first day of the month in which we execute it.

Subpart E—Financial Accountability and Risk Management

General Bonds

§ 256.500 What security must I provide when I obtain my lease?

(a) Before MMS will issue your lease or approve an assignment of an existing lease, you must provide one of the following general bonds on Form MMS–2028:

(1) A lease-specific $50,000 general bond that guarantees compliance with all terms and conditions of the lease; or

(2) An area-wide $300,000 general bond that guarantees compliance with all terms and conditions of all your leases in the area where your lease is located; or

(3) A lease-specific or area-wide general bond as required for exploration or development and production activities as specified in § 256.501.

(b) For the purpose of an area-wide bond, the areas are each planning area as administered by MMS.

(c) You have met the bonding requirement under this section if your designated lease operator provides a lease-specific or area-wide general bond that guarantees compliance with all terms and conditions of the lease, as required under § 256.501.

(d) The MMS may adjust the dollar amount of the general bonds described in this section by using the Implicit Price Deflator for Gross Domestic Product or a substantially equivalent index.

§ 256.501 Do my general bonding requirements change as activities progress on my lease?

The table in this paragraph contains the general bond requirements for each stage of activity on your lease. Each bond must guarantee compliance with all terms and conditions of the lease. You may satisfy these bond requirements with a new bond or by increasing the amount of your existing bonds required under § 256.500.

Stage of activity	Amount of general bond	Deadline for submission	Exceptions
(a) Before lease exploration activities begin.	$200,000	Earlier of either of the following: The date you submit an Exploration Plan (EP) for approval; or the date you, as an assignee, submit a request for approval of assignment of a lease with an approved EP	The Regional Director may authorize you to submit the $200,000 bond after you submit an EP, but before we approve drilling activities under the EP. You need not submit and maintain a $200,000 lease exploration bond if you furnish and maintain either: (1) A $1 million area-wide bond issued by a certified surety and conditioned on compliance with all the terms and conditions of all leases in the area; or (2) A $3 million area-wide bond under paragraph (b) of this table.

Stage of activity	Amount of general bond	Deadline for submission	Exceptions
(b) Before lease development and production activities begin.	$500,000	Earlier of either of the following: The date you submit a Development and Production Plan (DPP) or Development Operations Coordination Document (DOCD) for approval; or the date you, as an assignee, submit a request for approval of assignment of a lease with an approved DPP or DOCD	The Regional Director may authorize you to submit the $500,000 lease development bond after you submit a DPP or DOCD, but before we approve the installation of a platform or the commencement of drilling activities under the DPP or DOCD. You need not submit and maintain a $500,000 lease development bond if you furnish and maintain a $3 million area-wide bond that is issued by a certified surety and conditioned on compliance with all the terms and conditions of all leases in the area. We may accept a bond of less than $500,000 if: (1) You can demonstrate that wells and platforms can be abandoned and removed and drilling and platform sites cleared of obstructions for less than $500,000; and (2) The bond is at least equal to the cost of well abandonment, platform removal, and site clearance.

§ 256.502 What instruments other than a surety bond may I use to provide the required security?

You may pledge U.S. Department of Treasury securities or other types of security instruments if MMS determines that such security protects us to the same extent as the required bond. If you use a Treasury security:

(a) You must post 115 percent of your bonding amount.

(b) You must daily monitor the collateral value of your security. If the collateral value of your security, as determined in accordance with the 31 CFR part 225 Collateral Margins Table (which can be found at *http://www.treasurydirect.gov*) falls below the required level of coverage, you must within 10-business days, pledge additional security to provide the required amount.

(c) You must include with your pledge, authority for us to sell the security and use the proceeds if we determine that you have failed to comply with any of the terms and conditions of your lease, right-of-way (ROW), or right-of-use and easement (RUE), any subsequent approval or authorization, or applicable regulations.

§ 256.503 What general requirements must my bond or other security meet?

(a) Any bond or other security that you provide must:

(1) Be payable to MMS upon demand;

(2) Guarantee compliance under the lease and regulations of all of your non-monetary obligations and those of all lessees, operating rights owners, and operators on the lease; and

(3) Guarantee all of your monetary obligations.

(b) All surety bonds and Treasury notes must be on an official form approved by MMS. You may submit a bond on an approved form that you have reproduced. If the document you submit either advertently or inadvertently omits any terms and conditions that are included on the approved form, your bond is deemed to contain the omitted terms and conditions of the official form.

(c) The MMS reserves the right to require electronic filing with a 90-day notice published in the **Federal Register**.

(d) Surety bonds must be issued by a surety that the Treasury certifies as acceptable to provide bonds to Federal agencies by listing in the current Treasury Circular 570, as required by 31 CFR 223.16. You may obtain a copy of Circular 570 from the Treasury Web site at *http://www.fms.treas.gov.*

(e) You and a certified surety must execute your bond. When the surety is a corporation, an authorized corporate officer must sign the bond and attest to it over the corporate seal, and include the power of attorney authorizing said officer to bind the security.

(f) You may not terminate the period of liability of, or cancel your bond, except as provided in this subpart. Bonds must continue in full force and effect even though an event has occurred that could diminish, terminate, or cancel a surety's obligation under State law.

§ 256.504 Must my surety bond cover the payment obligations of my co-lessees and designated operators?

You may exclude from coverage the payment obligations of a co-lessee or designated operator from your bond by giving MMS a written statement specifying which co-lessees and designated operators are to be excluded. The exclusion of payment obligations from coverage does not exclude the non-payment obligations of the lease.

§ 256.505 What happens if my co-lessees or designated operators exclude my payment obligations from their bond?

You must post a bond at the level specified in this subpart for the level of activity on the lease. We may require a lesser amount if you can demonstrate that your payment obligations are less than the bond amounts required.

Supplemental Bonds

§ 256.510 Can MMS require that I post a supplemental bond?

(a) To ensure coverage of potential lease, ROW, or RUE decommissioning liabilities and/or other obligations, MMS may determine that you need to provide a supplemental bond as security in addition to the requirements under §§ 256.500 and 256.501 for general bonds. The Regional Director may require you to demonstrate the sufficiency of your bond to accomplish your lease obligations. You must submit supplemental bonds on Form MMS–2028A.

(b) A requirement to post a supplemental bond(s) will be based on the Regional Director's determination of the cost to meet all accrued and anticipated obligations of your lease(s), ROW(s), or RUE(s), including those arising from operating rights interests, and an evaluation of the probability that you will be able to carry out present and future financial obligations as demonstrated by:

(1) Financial capacity substantially in excess of existing and anticipated lease and other obligations, as evidenced by audited financial statements (including

auditor's certificate, balance sheet, and profit and loss sheet);

(2) Projected financial strength significantly in excess of existing and future lease and other obligations based on the estimated value of your existing OCS lease production;

(3) Business stability based on 5 years of continuous operation and production of oil and gas or sulphur in the OCS or onshore;

(4) Reliability in meeting obligations based on credit ratings or trade references, including names and addresses of other lessees, drilling contractors, and suppliers with whom you have dealt; and

(5) A record of compliance with laws, regulations, and lease, ROW, or RUE terms.

(c) The MMS determines the amount of supplemental bond required to guarantee compliance. The Regional Director performs a case-specific analysis and considers such items as the potential underpayment of royalties; the cumulative obligations to abandon wells and remove platforms and facilities; and the requirement to clear the seafloor of obstructions.

(d) If your cumulative potential obligations and liabilities increase or decrease, MMS may adjust the amount of the supplemental bond required.

(1) The MMS will notify you of any proposed adjustment to your bond amount and give you an opportunity to comment.

(2) If you request a reduction, you must submit evidence to the Regional Director that the projected amount of royalties due the Government over the next 12 months, any past due royalties, other payment obligations, and the estimated costs of your required decommissioning and cleanup, are less than the required bond amount. If MMS agrees, we will reduce the amount of the supplemental bond required.

(e) Your supplemental bond must meet the requirements specified for general bonds under § 256.503. You may utilize U.S. Department of the Treasury securities or other types of security instruments that MMS determines protect us to the same extent as the required bond. If you use a Treasury security, you must meet the requirements specified for general bonds in § 256.502.

§ 256.511 May I use a third-party guaranty to meet the supplemental bonding requirement?

(a) You may use a third-party guaranty if the guarantor meets the criteria prescribed in paragraph (b) of this section and submits an agreement meeting the criteria prescribed in paragraph (c) of this section. The agreement must guarantee compliance with the obligations of all lessees, operating rights owners, and operators on the lease(s), ROW(s), and RUE(s).

(b) The MMS will consider the following factors in deciding whether to accept an agreement:

(1) The length of time that your guarantor has been in continuous operation as a business entity. You may exclude periods of interruption that are beyond the guarantor's control by demonstrating, to the satisfaction of the Regional Director, that the interruptions do not affect the likelihood of your guarantor remaining in business during exploration, development, production, and decommissioning operations on your lease(s), ROW(s), and RUE(s) covered by the indemnity agreement.

(2) Financial information available in the public record or submitted by your guarantor in sufficient detail to show us that your guarantor meets the criteria stated in paragraph (b)(4) of this section. Such detail includes:

(i) The current rating for its most recent bond issuance by a generally recognized bond rating service such as Moody's Investor Service or Standard and Poor's Corporation;

(ii) Your guarantor's net worth, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees;

(iii) Your guarantor's ratio of current assets to current liabilities, taking into account liabilities for compliance with all terms and conditions of your lease, regulations, and other guarantees; and

(iv) Your guarantor's unencumbered domestic fixed assets.

(3) If the information in paragraph (b)(2) of this section is not publicly available, your guarantor must submit the information in the following table, to be updated annually within 90 days of the end of the fiscal year (FY) or as otherwise prescribed.

Your guarantor must submit . . .	That . . .
(i) Financial statements for the most recently completed FY	Include a report by an independent certified public accountant containing the accountant's audit or review opinion of the statements. The report must be prepared in conformance with generally accepted accounting principles and contain no adverse opinion.
(ii) Financial statement for completed quarter in the current FY	Your guarantor's financial officer certifies to be correct.
(iii) Additional information related to bonds, if requested by the Regional Director	Your guarantor's financial officer certifies to be correct.

(4) Your guarantor's total outstanding and proposed guarantees must not exceed 25 percent of its unencumbered domestic net worth.

(c) Your guarantor must submit an agreement executed by the guarantor and all parties bound by the agreement. All parties are bound jointly and severally and must meet the qualifications set forth in §§ 256.400 and 256.401.

(1) When any party is a corporation, two corporate officers authorized to execute the indemnity agreement on behalf of the corporation must sign the agreement.

(2) When any party is a partnership, joint venture, or syndicate, the indemnity agreement must bind each party who has a beneficial interest in your guarantor and provide that, upon MMS demand under your guaranty, each party is jointly and severally liable for compliance with all terms and conditions of your lease(s), ROW(s), and RUE(s) covered by the agreement.

(3) When forfeiture of the guaranty is called for, the agreement must provide that your guarantor will either bring your lease(s), ROW(s), and RUE(s) into compliance or provide, within 7-calendar days, sufficient funds to permit MMS to complete corrective action.

(4) The guaranty agreement must contain a confession of judgment, providing that, if we determine that you are, or your operator or operating rights owner is, in default, the guarantor must not challenge the determination and must remedy the default.

(5) If you fail, or your operator or operating rights owner fails, to comply with any law, term, or regulation, your guarantor must either take corrective action or provide, within 7-calendar days or other agreed upon time period, sufficient funds for MMS to complete corrective action. Such compliance must not reduce your guarantor's liability.

(6) If your guarantor wants to terminate the period of liability, your guarantor must notify you and us at least 90 days before the proposed termination date, obtain our approval for termination of all or a specified portion of the guarantee for liabilities arising after that date, and remain liable for all your work performed during the period the agreement is in effect.

(7) Each guaranty submitted pursuant to this section is deemed to contain all the above terms, even if they are not actually in the agreement.

(d) If your guaranty is to be terminated, you must provide an acceptable replacement in the form of a bond or other security before the termination.

§ 256.512 May I use a lease, right-of-way (ROW), or right-of-use and easement (RUE)-specific decommissioning account to meet the supplemental bonding requirement?

(a) The MMS may authorize you to establish a lease, ROW, or RUE-specific decommissioning account in a Federally-insured institution in lieu of a supplemental bond. The funds must not be withdrawn from the account without written approval by MMS.

(1) The funds must be payable to MMS and pledged to meet your decommissioning obligations.

(2) You must fully fund the account to cover all costs of decommissioning, including site clearance within the time we prescribe. The MMS will estimate the cost of decommissioning and site clearance.

(b) Any interest paid on the account will be treated as account funds unless MMS authorizes in writing that any interest be paid to the depositor.

(c) The Regional Director may allow you to pledge Treasury securities payable to MMS on demand to satisfy your obligation to make payments into the account. Acceptable Treasury securities and their collateral value are defined in 31 CFR part 380.

(d) The MMS may require you to create an overriding royalty or production payment obligation for the benefit of the account. The obligation may be associated with production from another lease.

Changes in Bonding or Security

§ 256.520 What do I do if my bond lapses?

(a) If your surety is decertified by the Treasury, becomes bankrupt or insolvent, or if your surety's charter or license is suspended or revoked, you must provide alternate security immediately. You must promptly inform MMS about the bond lapse and provide a new bond to us in the amount required under this subpart.

(b) You and your surety must notify MMS within 72 hours after you learn of any action filed alleging that you are, or your surety or guarantor is, insolvent or bankrupt, or has been decertified by the U.S. Treasury.

§ 256.521 What happens if the value of my bond or other security is reduced?

If the value of your bond or other security is reduced because of a default or any other reason, you must provide additional bond coverage sufficient to meet the requirements of this subpart within 45 days; however, MMS may specify a shorter period of time.

§ 256.522 What happens if my surety wants to terminate the period of liability of my bond?

(a) Terminating the period of liability of a bond ends the period during which obligations continue to accrue, but does not relieve the surety of the responsibility for obligations and liabilities that accrued during the period of liability and before the date on which MMS terminates the period of liability under paragraph (b) of this section. The liabilities that accrue during a period of liability include:

(1) Obligations that started to accrue prior to the beginning of the period of liability and had not been met, and

(2) Obligations that began accruing during the period of liability.

(b) Your surety must submit its request to MMS to terminate the period of liability under its bond and notify you of that request. We will terminate that period of liability within 90 days after we receive the request. If you intend to continue operations, or have not met all end-of-lease obligations, we will require you to provide a replacement bond of equivalent value.

(c) If the period of liability is terminated but the bond is not cancelled under § 256.523, the surety that provided the bond must continue to be liable for accrued obligations until all obligations are satisfied.

§ 256.523 What happens if my surety wants to cancel my bond?

(a) The MMS will cancel or release a bond and relieve the surety from accrued obligations only if:

(1) The MMS determines that there are no outstanding obligations; or

(2) You furnish a replacement bond or an alternative form of security in an amount equal to or greater than the bond to be cancelled to cover the terminated period of liability and:

(i) Before MMS will cancel a general bond prescribed under §§ 256.500 or 256.501 on the basis of a replacement bond, the surety issuing the new bond must expressly agree to assume all outstanding liabilities that accrued during the period of liability that was terminated.

(ii) Before MMS will cancel a supplemental bond on the basis of a replacement bond, the surety issuing the new bond must agree to assume that portion of the outstanding liabilities that accrued during the terminated period of liability that exceeds the coverage of the bond prescribed under §§ 256.500 or 256.501 and of which you were notified.

(b) When your lease ends, your surety(s) remain(s) responsible and MMS will retain any pledged security as shown in the table below:

Bond type:	The period of liability ends:	Your bond will be cancelled:
(1) General bonds submitted under §§ 256.500 or 256.501.	When MMS determines that you have met all of your obligations under the lease.	Seven years after the lease ends, 6 years after completion of all bonded obligations, or at the conclusion of any appeals or litigation related to your bonded obligation, whichever is the latest. The MMS will reduce the amount of your bond or return a portion of your security, if we determine that you need less than the full amount of the bond to meet any possible future obligations.
(2) Supplemental bonds submitted under this subpart.	When MMS determines that you have met all your obligations covered by the supplemental bond.	When you meet your bonded obligations, unless MMS: (i) Determines that the future potential liability resulting from any undetected obligations is greater than the amount of the base bond; and (ii) Notifies the provider of the bond that we will wait 7 years before canceling all or a part of the bond, or a longer period as necessary to complete any appeals or judicial litigation related to your bond obligation.

§ 256.524 Why might MMS call for forfeiture of my bond?

(a) The MMS may call for forfeiture of all or part of the bond or pledged security or performance by your guarantor if:

(1) After notice and demand for performance by MMS, you refuse or fail, within the timeframe we prescribe, to comply with any term or condition of your lease; or

(2) You default on one of the conditions under which we accepted your bond.

(b) The MMS may pursue forfeiture without first making demands for performance against any other lessee, operating rights owner, or other person approved to perform lease obligations.

§ 256.525 How will I know about this forfeiture?

(a) The MMS will notify you and your surety or guarantor in writing of the call for forfeiture and provide the reasons for the forfeiture and the amount to be forfeited. We will base the amount upon our estimate of the total cost of corrective action to bring your lease into compliance.

(b) The MMS would advise you, your guarantor, and any surety that you may avoid forfeiture if, within 5 business days:

(1) You, or your guarantor, agree(s) to and demonstrate(s) that you will bring your lease into compliance within the timeframe we prescribe; or

(2) Your surety agrees to, and demonstrates that, it will bring your lease into compliance within the timeframe we prescribe, even if the cost of compliance exceeds the face amount of the bond.

§ 256.526 What if correcting my default requires a change in the amount of my bond?

(a) If MMS demands forfeiture of your bond, we will collect the forfeited amount and use the funds to bring your lease(s) into compliance and correct any default.

(b) If the amount collected under your bond is insufficient to pay the full cost of corrective action, MMS may take or direct action to obtain full compliance and recover all costs in excess of the forfeited bond from you, any co-lessee, operating rights owner, or responsible guarantor.

(c) If the amount collected under your bond exceeds the full cost of corrective action to bring your lease(s) into compliance, MMS will return the excess funds to the party from whom they were collected.

Subpart F—Maintaining a Lease

Initial Period of a Lease

§ 256.600 What is the initial period of my oil and gas lease?

(a) The initial period of your oil and gas lease may range from 5 to 10 years. The MMS will specify the initial period in the notice of sale and in the lease instrument.

(b) For leases in water depths of 400 to 799 meters, unless otherwise provided for in the notice of sale, the initial period will be 8 years but you must begin an exploratory well within the first 5 years. Your lease will be subject to administrative cancellation after 5 years if you have not begun an exploratory well.

§ 256.601 How may I maintain my oil and gas lease beyond the initial period?

(a) You may maintain your oil and gas lease beyond the initial period as long as you are producing oil or gas in paying quantities, you are granted a suspension, or you are conducting approved drilling or well reworking operations, in accordance with 30 CFR part 250.

(b) You may maintain your oil and gas lease by producing from, or drilling or reworking approved directional wells under your lease that originates from the surface of the seabed adjacent to or adjoining your lease.

(c) You may maintain your oil and gas lease if your lease is being drained by a well on another lease and you are paying compensatory royalty.

(d) You may maintain your oil and gas lease if the lease, or part of the lease, is part of an MMS-approved unit agreement, and there either is production allocated to your lease, a suspension of unit operations, or the unit is conducting approved drilling or well-reworking operations in accordance with 30 CFR part 250.

§ 256.602 What is the initial period of my sulphur lease?

Your sulphur lease will have an initial period of not more than 10 years. The MMS will announce the initial period prior to the lease sale. Your lease will be subject to administrative cancellation after 5 years if you have not begun an exploratory well.

§ 256.603 How may I maintain my sulphur lease beyond the initial period?

You may maintain your sulphur lease after the initial period as long as you are producing sulphur in paying quantities; granted a suspension; or conducting drilling, reworking, plant construction, or other operations necessary to the production of sulphur.

Lease Obligations

§ 256.605 What are my obligations as a record title owner?

(a) As a record title owner, you are responsible for all performance on the lease, including paying any rent and royalty due. If there is more than one record title or operating rights owner, each of you are jointly and severally liable for non-monetary lease obligations, including the obligation to protect the lease from drainage and to pay compensatory royalty that may be owed. You are also jointly and severally liable for plugging and abandonment obligations that accrue while you hold record title interest. For example, this means that if you own 50 percent record title interest, MMS may hold you responsible for 100 percent of the non-monetary obligations, if your joint owner(s) default(s).

(b) For monetary obligations, such as paying rent and royalty, your obligation is proportionate to your interest. For example, if you own 25 percent of the record title interest, you are liable for only 25 percent of the rent or royalty on production. As a record title owner, you also are secondarily liable for monetary obligations of any operating rights holders on the lease.

§ 256.606 What are my rights and obligations as an operating rights owner?

(a) As an operating rights owner, you have the right to enter the leased area to conduct drilling and related operations including production according to the lease terms and applicable regulations.

(b) You have the right to authorize another party to conduct operations on the lease.

(c) You are jointly and severally liable with other record title owners and operating rights holders in the lease for all non-monetary lease obligations pertaining to that portion of the lease subject to your operating rights.

(d) You are liable for monetary obligations pertaining to that portion of the lease subject to your operating rights with other operating rights holders in proportion to your share of such operating rights.

Transferring Interest in All or Part of a Lease

§ 256.610 May I sell, exchange, assign, or otherwise transfer my lease?

No lease issued under this part may be sold, exchanged, assigned, or otherwise transferred except with the approval of MMS.

§ 256.611 May I assign all or part of my lease interest?

You may assign all or part of your lease interest subject to MMS approval.

Each instrument that creates or transfers an interest must describe the entire tract or describe, by officially designated subdivisions, the interest you propose to create or transfer. Officially designated subdivisions, or aliquot parts, are a half (½), a quarter (¼), a quarter of a quarter (¼¼), and a quarter of a quarter of a quarter (¼¼¼). We may disapprove an assignment when the assignor or assignee has outstanding or unsatisfied obligations under this chapter.

§ 256.612 May I assign operating rights?

You may assign your operating rights in all or part of your lease subject to MMS approval. However, you may create subleases of only two depth levels per aliquot part. Operating rights must be described by officially designated subdivisions, or aliquot parts, and limited to specific depths within those subdivisions.

§ 256.613 How do I seek approval of an assignment?

(a) You must request approval of each assignment and submit to MMS two originals of each instrument that creates or transfers ownership of record title or operating rights within 90 days after the last party executes the transfer agreement. You must pay the service fee listed in § 256.104 with your request.

(1) All assignments must be on the appropriate form approved by MMS.

(i) Form MMS–150 entitled, *Assignment of Record Title Interest in Federal OCS Oil and Gas Lease.*

(ii) Form MMS–151 entitled, *Assignment of Operating Rights Interest in Federal OCS Oil and Gas Lease.*

(2) When an assignment is made of 100 percent of the record title interest in an officially designated subdivision of your lease, that assignment creates a new lease. Your assignee becomes the leaseholder of the newly segregated lease that is subject to all the terms and conditions of your original lease, including the requirement to furnish a bond in the amount required in subpart E of this part.

(b) Before MMS approves an assignment, we will consult with and consider the views of the Attorney General.

§ 256.614 How do I transfer the interest of a deceased leaseholder?

(a) If any of the leaseholders are deceased, you as heir or devisee must provide evidence as to who are the lawful successors in interest.

(b) You as heir or devisee must submit a certified copy of an appropriate court order or decree; or if no court action is necessary, a certified copy of the will or the statements of two disinterested parties with knowledge of the facts.

(c) You as heir or devisee must submit statements that you are the person named as successor in interest along with evidence of your qualifications to hold a lease under subpart D of this part.

(d) If you do not qualify to hold a lease under subpart D of this part, you will be recognized as the successor in interest, but must divest your interest in the lease within 2 years.

§ 256.615 What if I want to assign interests in more than one lease at the same time?

To assign interests in more than one lease at the same time, you must file a separate form and two originals of the instrument that creates or transfers ownership for each lease assigned. However, if all leases are being transferred to the same entity, you need submit only one application letter of request for approval.

§ 256.616 What is the effect of an assignment on an assignor's liability?

As assignor, you are liable for all obligations, monetary and non-monetary, that accrued under your lease before MMS approves your assignment. Our approval of the assignment does not relieve you of these accrued obligations if your assignee, or any subsequent assignee, fails to perform. In addition, MMS may require you to bring the lease into compliance to the extent the obligation accrued before approval of your assignment, if your assignee or any subsequent assignee, fails to perform any obligation under the lease. You remain liable for all obligations if you create a sublease of operating rights only.

§ 256.617 May I specify an effective date of the assignment?

The MMS will record the assignment as effective on the date you specify. If you do not specify a date, the assignment is effective on the first day of the month following your request to assign. Regardless of the effective date, the date that we approve the assignment determines when the assignor's liabilities cease to accrue.

§ 256.618 What is the effect of an assignment on an assignee's liability?

As assignee, you and any subsequent assignees are liable for all obligations that have accrued or will accrue after MMS approves the assignment. As assignee, you must comply with all the terms and conditions of the lease and regulations issued under the Act, remedy all existing environmental and operational problems on the lease, properly abandon all wells, and reclaim the site as required under 30 CFR part 250.

§ 256.619 As a restricted joint bidder, may I assign interest to another restricted joint bidder?

If you are a restricted joint bidder, you may assign all or part of your interest in a lease to another restricted joint bidder. However, if you want to assign less than your entire interest to another restricted joint bidder, you must submit to MMS a copy of any agreements relating to your acquisition of the lease or interest. The MMS may ask the Attorney General to review your request.

§ 256.620 Are there any interests I may assign without MMS approval?

(a) You may create or transfer carried working interests, overriding royalty interests, or payments out of production without MMS approval. However, you must send us a copy of each instrument creating or transferring such interests for record purposes. For each lease affected, you must pay the service fee listed in § 256.104 with your documents submitted for record.

(b) If you submit documents for record purposes that are not required by these regulations, for each lease affected, you must pay the service fee listed in § 256.104 with your document submissions. The MMS may decline to accept for filing such documents and the service fee will not be refunded.

§ 256.621 What reports must I submit for lease term pipelines when MMS approves a lease assignment?

Within 30 calendar days after MMS approves an assignment of a lease, or approves a new designation of operator for a lease under § 250.143 or § 250.144, you (the new lessee or designated lease operator) must submit a report to the Regional Supervisor that:

(a) Lists every lease term pipeline (see definition at § 250.105), including decommissioned pipelines on the lease; and

(b) Indicates which pipelines remained as lease term pipelines after the lease assignment was approved by MMS.

Helium

§ 256.630 What must a lessee do if MMS elects to extract helium from a lease?

(a) The MMS reserves the ownership of, and the right to extract, helium from all gas produced from your OCS lease. Under section 12(f) of the Act, 43 U.S.C. 1341(f), upon our request, you must deliver all or a specified portion of the gas containing helium to us at a point on the lease or an onshore processing facility that we designate.

(b) The MMS will determine reasonable compensation and pay you for any loss caused by the extraction of

helium, except for the value of the helium itself. We may erect, maintain, and operate on your lease any reduction work and other equipment necessary for helium extraction. Our extraction of helium will be conducted in a manner to not cause substantial delays in the delivery of gas to your purchaser.

Subpart G—Ending a Lease

§ 256.700 How does a lease end?

Your lease will expire by its own terms at the end of its initial period, if you have not taken actions to extend the lease through production in paying quantities, drilling operations, workover operations, or a suspension under 30 CFR part 250.

§ 256.701 May I end the lease myself?

You may join with all record title owners to relinquish all or any officially designated subdivision of your lease at any time by filing three original copies of your request with MMS on Form MMS–152 entitled, *Relinquishment of Federal OCS Oil and Gas Lease*. The relinquishment is effective on the date of filing. Relinquishing your lease does not relieve you of any accrued obligations, either monetary or non-monetary.

§ 256.702 Will MMS end my lease?

(a) The MMS may cancel your lease under section 5(a) of the Act, 43 U.S.C. 1334(a), if we find that continued activity would probably cause serious harm or damage to life, property, any mineral, National security or defense, or to the marine, coastal, or human environment; that the threat or harm or damage will not disappear or decrease to an acceptable level within a reasonable period of time; and that the advantages of cancellation outweigh the advantages of continuing the lease. Refer to 30 CFR part 250, subpart A, for procedures on lease cancellation and compensation.

(b) The MMS may cancel your non-producing lease if you fail to comply with any provision of the Act, lease, or applicable regulations, if the failure continues for 30 days after we send you written notice of such failure. Cancellation is subject to judicial review under section 23(b) of the Act, 43 U.S.C. 1349(b).

(c) The MMS may cancel your producing lease if you fail to comply with any provision of the Act, lease, or applicable regulations, only after the judicial proceedings required under section 5(d) of the Act, 43 U.S.C. 1334(d).

(d) The MMS may cancel your lease if we find proof that the lease was obtained by fraud or misrepresentation. You will have notice and an opportunity to be heard prior to lease cancellation.

Subpart H—[Reserved]

Subpart I—Bonus or Royalty Credits for Exchange of Certain Leases

§ 256.900 Which leases may I exchange for a bonus or royalty credit?

You may exchange a lease for a bonus or royalty credit if it:

(a) Was in effect on December 20, 2006, and

(b) Is located in:

(1) The Eastern planning area and within 125 miles of the coastline of the State of Florida, or

(2) The Central planning area and within the Desoto Canyon OPD, the Destin Dome OPD, or the Pensacola OPD and within 100 miles of the coastline of the State of Florida.

§ 256.901 How much bonus or royalty credit will MMS grant in exchange for a lease?

The amount of the bonus or royalty credit for an exchanged lease equals the sum of:

(a) The amount of the bonus payment; and

(b) All rental paid for the lease as of the date the lessee submits the request to exchange the lease under § 256.902 to MMS.

§ 256.902 What must I do to obtain a bonus or royalty credit?

(a) To obtain the bonus or royalty credit, all of the record title interest owners in the lease must submit the following to the MMS Regional Supervisor for Leasing and Environment for the GOM on or before October 12, 2010:

(1) A written request to exchange the lease for the bonus or royalty credit, signed by all record title interest owners in the lease.

(2) The name and contact information for a person who will act as a contact for each record title interest owner.

(3) Documentation of each record title interest owner's percentage share in the lease.

(4) A list of all bonus and rental payments for that lease made by, or on behalf of, each of the current record title owners.

(5) A written relinquishment of the lease as described in § 256.701. Notwithstanding § 256.701, the relinquishment will become effective when the credit becomes effective under paragraph (b) of this section.

(b) The credit becomes effective when MMS issues a certification to the record title interest owners that the lease has qualified for the credit.

§ 256.903 How is the bonus or royalty credit allocated among multiple lease owners?

The MMS will allocate the bonus or royalty credit for an exchanged lease to the current record title interest owners in the same percentage share as each owner has in the lease as of the date of the request to exchange the lease.

§ 256.904 How may I use the bonus or royalty credit?

(a) You may use a credit issued under this part in lieu of a monetary payment due under any lease in the Gulf of Mexico not subject to the revenue distribution provisions of section 8(g)(2) of the OCSLA (43 U.S.C. 1337(g)(2)) for either:

(1) A bonus for acquisition of an interest in a new lease; or

(2) Royalty due on oil and gas production after October 12, 2010.

(b) You may not use a bonus or royalty credit in lieu of delivering oil or gas taken as royalty-in-kind.

(c) If you have any credit that remains unused after 5 years from the date MMS issued the credit, MMS reserves the right to apply the remaining credit to your ongoing obligations.

§ 256.905 How do I transfer a bonus or royalty credit to another person?

(a) You may transfer your bonus or royalty credit to any other person by submitting to the MMS Adjudication Unit for the Gulf of Mexico two originally executed transfer letters of agreement.

(b) Authorized officers of all companies involved in transferring and receiving the credit must sign the transfer letters of agreement as indicated on the qualification card filed with MMS.

(c) A transfer letter of agreement must include:

(1) The effective date of the transfer,

(2) The OCS–G number for the lease that originally qualified for the credit,

(3) The amount of the credit being transferred,

(4) Company names punctuated exactly as filed on the qualification card at MMS, and

(5) A corporate seal, only if MMS used a corporate seal qualification process for your corporation.

(d) The transferee of a credit transferred under this section may use it in accordance with § 256.904 as soon as MMS sends a confirmation of the transfer to the transferee.

PART 260—OUTER CONTINENTAL SHELF OIL AND GAS LEASING

5. The authority citation for 30 CFR part 260 is revised to read as follows:

Authority: 43 U.S.C. 1334.

6. Amend 30 CFR part 260 by removing Subpart D.

[FR Doc. E9–12155 Filed 5–26–09; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2009–0133; FRL–8909–7]

Approval and Promulgation of Air Quality Implementation Plans; California; Finding of Attainment of the 1-Hour Ozone Standard for the Ventura County Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On April 15, 2009 the California Air Resources Board (CARB) requested that EPA find that the Ventura County ozone nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). After a review of this submission and of the relevant monitoring data, EPA is proposing to make such a finding.

This finding would relieve the area of the requirement to implement contingency measures for failure to attain the standard by its attainment date, as well as Clean Air Act penalty fee requirements for severe and extreme ozone nonattainment areas that have not attained the 1-hour standard by the applicable attainment date.

DATES: Any comments on this proposal must arrive by June 26, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R09–OAR–2009–0133, by one of the following methods:

1. *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. *E-mail: nudd.gregory@epa.gov.*
3. *Fax:* (415) 947–3579.
4. *Mail or Delivery:* Greg Nudd (AIR–2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: Direct your comments to Docket ID No. EPA–R09–OAR–2009–0133. 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 a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., confidential business information). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Greg Nudd, Environmental Engineer, EPA Region IX, (415) 947–4107, *nudd.gregory@epa.gov.*

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

This proposal addresses the California Air Resources Board (CARB) request that EPA find that the Ventura County ozone nonattainment area has attained the revoked 1-hour ozone National Ambient Air Quality Standard (NAAQS). In the Rules and Regulations section of this **Federal Register,** we are making this finding as a direct final rule without prior proposal because we believe this action is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in a subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: May 14, 2009.

Jane Diamond,

Acting Regional Administrator, Region IX.

[FR Doc. E9–12137 Filed 5–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[EPA–HQ–RCRA–2009–0315; FRL–8905–6]

RIN 2050–AG31

Definition of Solid Waste Public Meeting

AGENCY: Environmental Protection Agency.

ACTION: Definition of Solid Waste Notice of Public Meeting and Request for Comments.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public meeting regarding the Agency's recent regulation on the definition of solid waste under Subtitle C of the Resource Conservation and Recovery Act (RCRA). Specifically, EPA is currently reviewing a petition filed with the Administrator under RCRA section 7004(a) requesting that the Agency reconsider and repeal the recently promulgated revisions to the definition of solid waste for hazardous secondary materials being reclaimed, and is soliciting comments and information to assist the agency in evaluating the petition. EPA does not plan to repeal the rule, but is interested in receiving comments on possible revisions to the rule. Persons may register to speak at the public meeting or may submit written comments to the address below.

DATES: The public meeting will be held on June 30, 2009, from 9 a.m. to 4:30 p.m. The closing date for advance registration is June 23, 2009. Persons may also submit written or electronic comments by July 14, 2009 (*see* **ADDRESSES**). The administrative record

of the meeting will remain open for submissions until July 14, 2009.

ADDRESSES: *Public meeting.* The public meeting will be held at One Potomac Yard, 2777 S. Crystal Drive, Arlington, VA 22202. Advance registration for the meeting is available at *http://www.epa.gov/epawaste/hazard/dsw/publicmeeting.htm.* For further information on registering for the meeting, *see* section IV below. *Written comments.* Submit your written comments, identified by Docket ID No. EPA–HQ–RCRA–2009–0315 by one of the following methods:

- *http://www.regulations.gov:* Follow the online instructions for submitting comments.
- *E-mail:* Comments may be sent by electronic mail (e-mail) to *RCRA-docket@epa.gov*, Attention Docket ID No. EPA–HQ–RCRA–2009–0315.
- *Fax:* Fax comments to: 202–566–9744, Attention Docket ID No. EPA–HQ–RCRA–2009–0315.
- *Mail:* Send comments to: OSWER Docket, EPA Docket Center, Mail Code 2822T, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2009–0315.

Instructions: 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, such as 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 OSWER 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 OSWER Docket is 202–566–0270.

FOR FURTHER INFORMATION CONTACT: For more detailed information on the definition of solid waste regulations, contact Tracy Atagi, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 308–8672 (*atagi.tracy@epa.gov*). For information on specific aspects of the public meeting, contact Amanda Geldard, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, MC 5304P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460, at (703) 347–8975, (*geldard.amanda@epa.gov*).

SUPPLEMENTARY INFORMATION: *Submitting CBI.* Do not submit this information to EPA through *http://www.regulations.gov* or e-mail. Clearly mark part of all information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR Part 2.

Outline

I. Background
A. Definition of Solid Waste Final Rule
B. Section 7004 Petition Submitted by Sierra Club
C. Industry Coalition Response to Petition
II. Purpose and Scope of the Public Meeting
III. Issues for Discussion
A. Definition of ''Contained''
B. Notification
C. Definition of Legitimacy
D. Transfer-Based Exclusion
IV. How To Participate in the Public Meeting
V. Implementation and State Adoption

I. Background

A. Definition of Solid Waste Final Rule

On October 30, 2008, EPA promulgated a final rule under the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901, *et seq.,* regarding regulation of hazardous secondary materials when they are recycled via reclamation (73 FR 64668). The rule excludes from the RCRA definition of solid waste for materials that are:

- Generated and legitimately reclaimed under the control of the generator (''generator-controlled exclusion'');
- Generated and transferred to another company for legitimate reclamation under specific conditions (''transfer-based exclusion''); or
- Determined by EPA or an authorized State to be non-wastes on a case-by-case basis via a petition process.

The rule also contains a provision to determine whether recycling activities are legitimate under the new exclusions and non-waste determinations. In order to be excluded under the revised definition of solid waste, hazardous secondary materials must be legitimately reclaimed and must meet the conditions of the exclusions.

B. Section 7004 Petition Submitted by Sierra Club

On January 29, 2009, the Sierra Club submitted a petition under RCRA section 7004(a), 42 U.S.C. 6974(a),[1] to the Administrator of EPA requesting that the Agency repeal the October 2008 revisions to the definition of solid waste (DSW) rule and stay the implementation of the rule. A copy of the petition is in the docket to this notice. The petition argues that the revised regulations are unlawful and that they increase threats to public health and the environment without producing compensatory

[1] *See Petition for Reconsideration of ''Revisions to the Definition of Solid Waste,''* 73 FR 64668 (Oct. 30, 2008) and *Request for Stay,* from Lisa Gollin Evans and Deborah Goldberg, Earthjustice, Attorneys for Sierra Club, to Lisa Jackson, Administrator, U.S. Environmental Protection Agency, January 29, 2009.

benefits, and therefore, should be repealed. Among other things, the petition singles out the lack of a regulatory definition of ''contained'' and ''significant release'' and disagrees with the Agency's findings that the rule would have no adverse environmental impacts, including no adverse impact to environmental justice communities or to children's health.

C. Industry Coalition Response to Petition

On March 6, 2009, a coalition of industry associations (''industry coalition'') [2] submitted a letter to the Administrator of EPA in response to the Sierra Club petition.[3] This letter requests that EPA deny Sierra Club's petition on the grounds that the DSW final rule comports with court cases construing the scope of EPA's jurisdiction to regulate solid waste under RCRA, and that the DSW final rule achieves significant economic and conservation benefits, while imposing significant controls on the hazardous secondary material recycling industry that are fully protective of the environment. A copy of this letter is in the docket to this notice. The letter also responds to each of the specific points raised by the Sierra Club in its petition.

II. Purpose and Scope of the Public Meeting

After meeting with representatives from both the Sierra Club and the industry coalition,[4] EPA has decided that it would be advisable to hear from a broader range of stakeholders before making a decision on how to best respond to Sierra Club's petition. The Agency has determined that a public meeting, with opportunities to provide comments both verbally and in writing, is an efficient and transparent method for obtaining public input. EPA also notes that a number of other letters were submitted to EPA by various members of the public after the Agency held the meetings with Sierra Club and the industry coalition. These letters are also in the docket to this notice.

The scope of possible changes to the definition of solid waste is governed by the concept of ''discard.'' As discussed in the preamble to the DSW final rule, EPA used the concept of discard as the central organizing idea behind the October 2008 revisions to the definition of solid waste. As stated in RCRA section 1004(27), ''solid waste'' is defined as ''* * * any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and *other discarded material* * * * resulting from industrial, commercial, mining and agricultural activities.'' (emphasis added) Therefore, in the context of the DSW final rule, a key issue relates to the circumstances under which a hazardous secondary material that is recycled by reclamation is or is not discarded (73 FR 64675). In exercising its discretion in the DSW final rule to define what constitutes ''discard'' for hazardous secondary materials reclamation, EPA included an explanation of how each provision of the final rule relates to discard (73 FR 64676–64679).

For example, in the DSW final rule, EPA determined that if the generator maintains control over the recycled hazardous secondary material and if the material is legitimately recycled under the standards established in the final rule and not speculatively accumulated within the meaning of EPA's regulations, then the hazardous secondary material is not discarded. This is because the hazardous secondary material is being treated as a valuable commodity rather than as a waste. By maintaining control over, and potential liability for, the reclamation process, the generator ensures that the hazardous secondary materials are not discarded. *See* 73 FR 64676.

Because the final revisions to the definition of solid waste are closely tied to EPA's interpretation of the concept of ''discard,'' EPA does not plan to repeal the rule in whole or stay its implementation. Such an action could result in hazardous secondary materials that are not discarded being regulated as hazardous waste. In particular, EPA does not expect to repeal either the exclusion for hazardous secondary materials reclaimed under the control of the generator or the non-waste determination petition process.

However, EPA believes that there may be opportunities to revise or clarify the definition of solid waste rule, particularly with respect to the definition of legitimacy and the transfer-based exclusion, in ways that could improve implementation and enforcement of the provisions, thus increasing environmental protection, while still appropriately defining when a hazardous secondary material being reclaimed is a solid waste and subject to hazardous waste regulation.

In section III of this notice, EPA lists several possible issues for discussion. These issues represent areas in which EPA is particularly interested in obtaining public feedback on possible changes to the definition of solid waste revisions. In addition to these issues, commenters may file comments on any other changes to the rule that they deem appropriate.

Section IV of this notice explains how to participate in the upcoming public meeting, while section V explains State adoption and how the final rule is currently implemented.

III. Issues for Discussion

A. Definition of ''Contained''

For both the generator-controlled and the transfer-based exclusions, EPA requires that the hazardous secondary material be ''contained.'' EPA stated in the final rule preamble that whether hazardous secondary materials are contained would be decided on a case-by-case basis, and that such materials are generally contained if they are placed in a unit that controls the movement of the hazardous secondary materials out of the unit. EPA also stated that hazardous secondary materials released to the environment and not immediately recovered are solid wastes; in addition, hazardous secondary materials remaining in the unit may also be a solid waste if they are not managed as a valuable raw material, intermediate, or product, and, as a result, a ''significant'' release of hazardous secondary materials from the unit to the environment were to take place and the materials were not immediately recovered. A release may be ''significant'' even if it is not a large volume, if such a release has the potential of causing significant damage over time (73 FR 64681).

EPA did not include a regulatory definition of ''contained,'' nor did we include specific performance or storage standards. EPA did not believe such an approach was necessary for determining whether hazardous secondary materials were discarded when sent for reclamation and believed that the approach in the DSW final rule, covered the breadth of activities that might take

[2] The industry coalition includes the Metals Industries Recycling Coalition (which includes the American Iron & Steel Institute, the Copper and Brass Fabricator's Council, the Copper Development Association Inc., the International Metals Reclamation Company, Inc., the Specialty Steel Industry of North America, and the Steel Manufacturers Association), the American Chemistry Council, the Alliance of Automobile Manufacturers, the American Coke & Coal Chemicals Institute, the National Paint and Coatings Association, the Treated Wood Council, the American Forest and Paper Association, and the Synthetic Organic Chemical Manufacturers Association.

[3] *See Response to Sierra Club's petition for Reconsideration of ''Revisions to the Definition of Solid Waste,''* 73 FR 64668 (Oct. 30, 2008,) and *Request for Stay,* from John L. Wittenborn, Counsel to Industry-Respondents, to Lisa Jackson, Administrator, U.S. Environmental Protection Agency, March 6, 2009.

[4] *See Memorandum to File from Alan Carpien, Attorney, EPA, Office of General Counsel,* April 28, 2009.

place under the exclusion (73 FR 64729).

However, by using a general performance standard (''contained'') in the regulations to determine whether a material is ''contained,'' the DSW final rule does not include specific requirements. Some commenters asked that more specific requirements be included in the rule. The Agency is considering developing a definition of ''contained'' in the regulations; such a definition would need to apply to a range of hazardous secondary materials and reclamation processes and still remain within the scope of determining whether a hazardous secondary material is ''discarded.'' EPA could also address this issue by setting specific performance or storage standards as a condition of the transfer-based exclusion. Finally, EPA could address this concern by developing more detailed guidance on what might constitute ''contained,'' for different types of units or management practices.

B. Notification

The DSW final rule required persons claiming one of the exclusions to notify the appropriate regulatory agency before operating under the exclusion. EPA explained that the notification requirement under the authority of RCRA section 3007 would not be a condition of the exclusion, and failure to notify, while constituting a violation of the notification regulations, would not affect the excluded status of the hazardous secondary materials. In other words, generators or reclaimers could fail to notify yet still be considered to be legitimately recycling their hazardous secondary materials according to the conditions of the exclusion (73 FR 64682).

EPA took this approach because it believed that the fact of notification was separable from the question of whether a material has been in fact ''discarded.'' At the same time, however, for both the generator-controlled and the transfer-based exclusions, the notification requirement is a key indication of a facility's intent to reclaim a hazardous secondary material and not discard it. Thus, for example, if during an inspection of a large quantity generator of hazardous waste, EPA were to discover a hazardous secondary material that had been stored onsite for more than 90 days without a RCRA permit (an act that would typically be a violation of the hazardous waste regulations), a previously filed notification would be an indication that the facility was planning to reclaim the hazardous secondary material under the conditions of the exclusion. Absent such a notification, it might be difficult for EPA to determine the facility's true intentions for the hazardous secondary material without arranging for follow-up inspections or gathering additional information. If EPA were to restructure the DSW final rule exclusions so that the notification was a condition of the exclusions rather than a 3007 requirement as suggested by commenters, the notification would serve as the first step in the facility's demonstrating that the hazardous secondary material is not being discarded. Such a system might provide a stronger incentive for facilities to notify and make it difficult for a facility to claim, after the fact, that it intended to reclaim a material, when it had no real intention of doing so.

C. Definition of Legitimacy

1. Applicability of Codified Definition

In the October 2008 DSW final rule, EPA codified the definition of ''legitimacy'' as a requirement for both the generator-controlled and transfer-based exclusions in the final rule and for the non-waste determinations, but not for other hazardous secondary material recycling. The purpose of defining legitimacy was to distinguish ''legitimate'' recycling from ''sham'' recycling (*i.e.,* waste treatment and/or disposal conducted in the guise of recycling). To avoid confusion among the regulated community and the States, as well as the other implementing regulatory agencies about the status of recycling exclusions that were in existence prior to the October 2008 DSW final rule, EPA codified the legitimacy factors as specifically applicable to the new exclusions and non-waste determination procedures in that final rule. However, the final rule also explained how the four legitimacy factors codified in the final rule are substantively the same as the existing legitimacy policy (73 FR 64707–64708).

While this approach was intended to make it clear that legitimacy determinations made for the existing exclusions are not affected by the codified language, ultimately there may be greater clarity if there is a single legitimacy standard for all recycling. Applying the regulatory legitimacy factors to all recycling also might ensure that the factors are better known and understood by the regulated community and easier for the States and EPA to monitor and enforce.

2. Legitimacy Factors ''To Be Considered''

In the October 2008 codified definition of legitimacy, EPA included four factors, all of which must be considered. Two of these factors must always be met,[5] while two factors may in some cases not need to be met, depending on such considerations as the protectiveness of the storage methods, exposure from toxics in the product, the bioavailability of the toxics in the product, and other relevant considerations. The Agency took this approach because there were some situations in which a legitimate recycling process did not conform to one or both of these two factors, yet the reclamation activity, in the Agency's judgment, was still legitimate. The two factors to consider are: (1) Whether the hazardous secondary material is managed as a valuable commodity, and (2) whether the product of the recycling process contains hazardous constituents that are significantly elevated in comparison to analogous products (*i.e.,* ''toxics along for the ride'') (73 FR 64701–64705).

EPA believes that most situations where one or both of these two factors are not met would be sham recycling. However, EPA expressed in the final rule that legitimate recycling may sometimes occur in these situations, and provided examples of where this might occur. Consequently, EPA built into the definition of legitimacy the provision that, after considering the factors, the regulated entity making the legitimacy determination can decide, based on considerations such as the protectiveness of the storage methods, exposure from toxics in the product, and the bioavailability of the toxics in the product, that the recycling is still legitimate (73 FR 64743–64744).

Some commenter's have asserted that not having all legitimacy factors be mandatory could mean that materials going for reclamation might be significantly mismanaged, or could lead to recycled products that present significant risks, compared to comparable virgin material products. This certainly was not EPA's intent in the final rule; in such a case EPA expects that regulatory agency would determine that such activity is not legitimate recycling. However, we are looking for comments on a different implementation approach that might require that all four legitimacy factors must be met, unless the implementing agency makes a determination (for example, through a petition process) that the recycling is still legitimate

[5] The two factors which must always be met are (1) whether the hazardous secondary material provides a useful contribution to the recycling process or product, and (2) whether the product or intermediate of the recycling process has value.

despite the fact that one or more of the latter two factors is not met.

D. Transfer-Based Exclusion

As EPA explained in the October 2008 DSW final rule, businesses often ship hazardous secondary materials to be reclaimed by a third party or commercial facility or another manufacturer. In such situations, EPA determined that the generator has relinquished control of the hazardous secondary materials and the entity receiving such materials may not have the same incentives to manage them as a useful product. This conclusion is supported by the results of both the damage case study and the market forces study that were performed in support of the final rulemaking (73 FR 64677–64678).

As a result of this conclusion, EPA developed specific conditions for the transfer-based exclusion in order for the Agency to determine which hazardous secondary materials transferred to another entity are not discarded. In the preamble to the final rule, EPA explained how each of these conditions specifically related to the concept of discard, as evidenced by the rulemaking record (73 FR 64678–64679).

EPA has identified a number of alternative approaches to the transfer-based exclusion that may be used to identify when hazardous secondary materials sent to another entity for reclamation are not discarded, and to appropriately regulate materials subject to RCRA regulation. These alternative approaches could include the following:

- EPA could repeal the transfer-based exclusion, and thus return to regulating most hazardous secondary materials transferred to third parties as discarded materials under traditional RCRA program requirements, while keeping the generator-controlled exclusion and the non-waste determination petition process as the basis for excluding materials which are not discarded;
- EPA could revisit the approach taken in the 2003 DSW proposal and limit the transfer-based exclusion to materials reclaimed in a ''continuous industrial process within the generating industry.'' The 2003 DSW proposal used NAICS codes to define ''within the generating industry.'' However, this approach was criticized by many commenters following its proposal. Thus, commenters supporting this option should address the practical problems involved in using this approach or suggest another approach;
- EPA could limit the transfer-based exclusion to activities where the generator is paid for the hazardous secondary material. However, EPA in the past has rejected this approach on the grounds that costs are subject to market uncertainty and manipulation, making this option difficult to establish and enforce. *See* 50 FR 614, 617 (January 4, 1985), 48 FR 14481, 14478–14481 (April 4, 1983). Thus, commenters supporting this option should address whether it could be practicably implemented and enforced.

In addition, any of the above three options could be combined with developing new more tailored exclusions focusing specifically on reclamation of certain hazardous secondary materials or reclamation performed in specific industries.

Alternatively, EPA could consider focused changes to the transfer-based exclusion. For example, EPA could revisit whether to allow intermediate facilities storing hazardous secondary materials to be eligible for the transfer-based exclusion. The purpose of including such facilities was to provide an opportunity for generators of smaller quantities of hazardous secondary materials to send these materials for reclamation, but it also added another possible step or steps through which the regulatory agencies must monitor materials to ensure that they are being legitimately reclaimed and not discarded. EPA could also explore requiring the equivalent of a ''closure plan'' for reclamation and intermediate facilities (if the Agency decides to continue to allow intermediate facilities to be eligible for the transfer-based exclusion) operating under the exclusion. Such a plan would allow the implementing agency additional upfront oversight to determine that the facility has made provisions to ensure that its hazardous secondary materials will not be abandoned (and therefore discarded). The plan would also provide a further basis for the reclaimers to estimate how much closure would cost, and therefore how much financial assurance is needed. In addition, allowing a public notice and comment step could help address concerns regarding the lack of participation by the potentially affected community in making these determinations, particularly if there are environmental justice concerns.

EPA is interested in comments and information on these issues or other areas that the public believes will assist the agency in evaluating the petition. The public may register to speak at the public meeting or may submit written comments as explained below.

IV. How To Participate in the Public Meeting

Persons who wish to participate in the public meeting (either by making a presentation or as a member of the audience) must register for the meeting (*see* **ADDRESSES** section). Persons requiring special accommodations due to a disability should inform the contact person of their request (*see* **FOR FURTHER INFORMATION CONTACT**). Persons may also submit written comments for the record. (*see* **ADDRESSES** section).

Persons who register in advance of the meeting should check in at the onsite registration desk between 8 a.m. and 9 a.m. We will also accept registrations onsite on a first-come, first-served basis; however, space will be limited and registration will be closed when the maximum seating capacity is reached. Persons who wish to register onsite on the day of the meeting may do so at the registration desk between 8 a.m. and 9 a.m.

We encourage all participants to attend the entire meeting. Because the meeting will be held in a Federal building, meeting participants must present photo identification and plan adequate time to pass through the security system.

Depending on the number of requests received, we may be obliged to limit the time allotted for each presentation (*e.g.,* 5 minutes each). If time permits, we may allow interested persons who attend the meeting, but did not register in advance to make an oral presentation at the conclusion of the meeting. The schedule of speakers will be available at the meeting. After the meeting, the schedule and a list of participants will be placed on file in the docket (*see* **ADDRESSES** section) under the docket number listed in brackets in the heading of this document. We will post all submissions and received comments without change, unless the submissions or comments contain CBI or other information whose disclosure is restricted by statute to *http://www.regulations.gov,* including any personal information provided.

EPA will carefully consider all information, both verbal and written, provided by stakeholders regarding the definition of solid waste as the Agency decides how to respond to the Sierra Club petition. Following review of all comments, EPA will decide how to respond to the petition, which may include proposing to make changes to the DSW rule through a notice of proposed rulemaking.

V. Implementation and State Adoption

The DSW final rule promulgated on October 30, 2008, became effective on December 29, 2008 (73 FR 64668) and remains in effect unless EPA goes through another rulemaking process (proposed and final) to repeal or amend

it. However, because the October 30, 2008 DSW revisions are less stringent than the hazardous waste regulations that applied to the affected hazardous secondary materials before the DSW rule went into effect, States that have been authorized to administer the RCRA Subtitle C hazardous waste program are not required to adopt these revisions. For States who do not adopt these revisions, the State hazardous waste regulations, as authorized by EPA, will remain the standards that apply to hazardous wastes sent to reclamation in that State.

Because the DSW final rule is in effect, States may decide to adopt these provisions (or to adopt a subset of these provisions, such as the generator-controlled exclusion) at any time. States may also decide not to adopt the DSW rule until such time as EPA completes the current process of reviewing the Sierra Club petition. If EPA subsequently decides to revise the rule, such that the revisions are more stringent than the October 30, 2008, rule, then those States who adopted the current version of the DSW rule would need to modify their program to adopt the more stringent provisions (because State RCRA regulations can be no less stringent than the Federal regulations).

Dated: May 11, 2009.

Matt Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9–12283 Filed 5–26–09; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket Nos. 07–294, 06–121, 02–277, 04–228; MM Docket Nos. 01–235, 01–317, 00–244; FCC 09–33]

Promoting Diversification of Ownership in the Broadcasting Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM) seeks comment on whether to modify FCC Form 323–E, the Ownership Report filed by noncommercial educational (NCE) licensees of AM, FM, and TV broadcast stations, to obtain gender, race, and ethnicity data. Obtaining the information, the FCC believes, would further its goal to design policies to advance diversity in the broadcast industry. The Fourth FNPRM also seeks comment on whether to collect gender, race and ethnicity ownership information for low power FM (LPFM) licensees or whether to continue to exempt LPFM licensees from the 323–E filing requirements.

DATES: Submit comments on or before June 26, 2009 and submit reply comment on or before July 13, 2009. Submit written comments on the PRA proposed information collection requirements on or before July 27, 2009.

ADDRESSES: You may submit comments, identified by MB Docket Nos. 07–294; 06–121; 02–277; 04–228; MM Docket Nos. 01–235; 01–317; 00–244, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Federal Communications Commission's Web Site: http://www.fcc.gov/cgb/ecfs/.* Follow the instructions for submitting comments.
- *Mail:* Submit hand-delivery paper comments to the Commission's contractor at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Submit commercial overnight mail to 9300 East Hampton Drive, Capitol Heights, MD 20743. Submit U.S. Postal Service First-Class, Express, and Priority mail to 445 12th Street, SW., Washington, DC 20554.
- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by *e-mail: FCC504@fcc.gov* or *phone:* (202) 418–0530 or TTY: (202) 418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Mania Baghdadi, (202) 418–2330; Amy Brett (202) 418–2300.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Fourth FNPRM adopted April 8, 2009, and May 5, 2009. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents will also be available via ECFS (*http://www.fcc.gov/cgb/ecfs*). The complete text may be purchased from the Commission's copy contractor, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Submit PRA comments to Nicholas A. Fraser, Office of Management and Budget, by e-mail at *Nicholas_A._Fraser@omb.eop.gov* or via fax at (202) 395–5167 and to Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC or by e-mail at *Cathy.Williams@fcc.gov* or *PRA@fcc.gov.*]

Filing Requirements

Ex Parte Rules. The Fourth FNPRM will be treated as ''permit-but-disclose'' subject to the ''permit-but-disclose'' requirements under Section 1.1206(b) of the Commission's rules. *Ex parte* presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, *ex parte* or otherwise, are generally prohibited. Persons making oral *ex parte* presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented is generally required. Additional rules pertaining to oral and written presentations are set forth in Section 1.1206(b) of the Commission's rules.

Comments and Reply Comments. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using (1) the Commission's Electronic Comment Filing System (ECFS); (2) the Federal Government's eRulemaking Portal; or (3) by filing paper copies. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Filers should follow the instructions provided on the Web site for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. 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, filers should send an e-mail to *ecfs@fcc.gov,* and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.

Paper Filers: 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 appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the FCC continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings between 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of *before* entering the building.

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 & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0267 (voice), (202) 418–0432 (TTY), or *bill.cline@fcc.gov*.

Availability of Documents. Comments, reply comments, and *ex parte* submissions will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 12th Street, SW., CY–A257, Washington, DC 20554. These documents also will be available from the Commission's Electronic Comment Filing System. Documents are available electronically in ASCII, Word 97, and Adobe Acrobat. Copies of filings in this proceeding may be obtained from Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; they can also be reached by telephone, at (202) 488–5300 or (800) 378–3160; by e-mail at *fcc@bcpiweb.com*; or via their Web site at *http://www.bcpiweb.com*.

Summary of the Fourth Further Notice of Proposed Rulemaking

1. *Noncommercial Entities.* The FCC Form 323–E Ownership Report is filed by NCE licensees of AM, FM, and TV broadcast stations. Currently, Form 323–E does not ask gender, race, or ethnicity data questions. The FCC seeks comment on whether to include this information on the form. The FCC tentatively concludes that obtaining gender, race, and ethnicity information would further its goal to design policies to advance diversity in the broadcast industry. The FCC believes that data from the entire universe of NCE stations are necessary to provide a comprehensive picture of broadcast ownership, including ownership by women and minorities in the broadcast industry. Researchers and the GAO support modifying the filing requirements to collect ownership data for NCE stations.

2. The FCC recognizes, however, that there are a number of data collection issues that could thwart its efforts to obtain minority and gender data due to the complex ownership structure of some NCE licensees. Many NCE broadcast licensees are non-profit, non-stock entities, or governmental organizations that are controlled by governing boards or trustees composed of members who do not have a financial stake in the licensee organization. Their structure and organization raise difficult issues as to how to define ownership in the NCE context.

3. The FCC seeks comment on how to define ownership, including minority and/or female ownership, in the NCE context. The FCC recognizes that organizational documents are important in defining an NCE entity's structure and mission, including whether it serves underserved audiences. However, these documents would not provide the same kind of empirical evidence that ownership statistics provide in the commercial context. The FCC asks whether looking at the composition of the board of directors or other governing entity of an NCE station would be adequate for this purpose. It also asks whether that information would meaningfully expand its information on minority and female ownership. In addition, the FCC seeks comment on any potential reporting and recordkeeping burdens on NCE entities. It asks whether difficulties in defining ownership in this context would compromise the integrity of the data and whether there are ways to minimize burdens on NCEs from this proposed reporting requirement. Assuming the FCC decides to seek information as to minority and female ''ownership'' of NCE licensees, it also seeks comment on whether to adopt the same or similar modifications to Form 323–E that are adopted in the accompanying Order for Form 323. For instance, it seeks comment on whether to establish a uniform biennial filing date and a uniform date as of which filers must identify ownership interests. It also seeks comment as to how to assure data quality, including whether measures such as improving the computer interface process, building in additional checks for Form 323–E to perform verification and review functions, and ensuring that all data filed is in a format that can be electronically searched, aggregated, and cross-referenced, are appropriate and sufficient.

4. LPFM licensees and permittees are currently exempt from filing Form 323–E. As of December 31, 2008, there are 859 LPFM licensees, all of which are NCE entities. The FCC seeks comment on whether to require LPFM licensees to file Form 323–E as the FCC proposes to revise it, to collect minority and gender information for LPFM licensees or to continue to exempt LPFM licensees from the 323–E filing requirements. The FCC seeks comment on whether the exclusion of any NCE ownership information, such as information on LPFM licensees, would diminish the usefulness of the new data. The FCC also invites comment as to whether it would be burdensome for LPFM licensees to report this information and, if so, how burdensome. If the FCC decides to collect this data from LPFM licensees, it seeks comment on whether LPFM licensees should be required to file Form 323–E or another shorter form that only seeks minority and gender ownership information.

Initial Paperwork Reduction Act Analysis

5. The Fourth FNPRM contains potential information collection requirements subject to the Paperwork Reduction Act of 1995 (''PRA''), Public Law 104–13. OMB, the general public, and other Federal agencies are invited to comment on the potential new and modified information collection requirements contained in this Fourth FNPRM. If the information collection requirements are adopted, the Commission will submit the appropriate documents to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA and OMB, the general public, and other Federal agencies will again be invited to comment on the new and modified information collection requirements adopted by the Commission. Comments should address: (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 estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of

automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Ex. Public Law 107–98, *see* 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

Initial Regulatory Flexibility Analysis

6. As required by the Regulatory Flexibility Act of 1980, as amended (''RFA''), the Commission has prepared an Initial Regulatory Flexibility Analysis (''IRFA'') of the possible economic impact on small entities by the policies and rules proposed in this Fourth FNPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Fourth FNPRM. The Commission will send a copy of the Fourth FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (''SBA'').

A. Need for, and Objectives of, the Proposed Rules

7. The Fourth FNPRM invites comment on proposed revisions to FCC Form 323–E, which would for the first time collect information on minority and female ownership of noncommercial radio and television licensees. The objective of the information collection is to obtain comprehensive ownership data to further the Commission's goal to design policies to advance diversity in the broadcast industry. In addition, the Fourth FNPRM seeks comment on whether to require LPFM licensees, which are noncommercial broadcast licensees, to file Form 323–E on a biennial basis and to file information as to their minority and female ownership.

B. Legal Basis

8. This Fourth FNPRM is adopted pursuant to sections 1, 2(a), 3, 4(i, j), 257, 301, 303(r), 307–10, and 614–15 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152(a), 153, 154(i, j), 257, 301, 303(r), 307–10, 534–35.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

9. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental entity'' under Section 3 of the Small Business Act. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. 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 SBA.

10. *Television Broadcasting.* The rules and policies proposed herein apply to licensees of noncommercial television stations, as well as potential licensees of noncommercial television stations. In this context, the application of the statutory definition to television stations is of concern. The Small Business Administration defines a television broadcasting station that has no more than $14 million in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting images together with sound.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Television Database as of February 19, 2009 there are about 392 noncommercial television stations. The FCC does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so the FCC will assume that all of these entities qualify as small businesses. In assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The FCC is unable to include or aggregate revenues from affiliated companies or entities so its assumption may overstate the number of small entities that might be affected by the proposal to require these entities to file Form 323–E.

11. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The Commission is unable at this time and in this context to define or quantify the criteria that would establish whether a specific noncommercial television station is dominant in its market of operation. Accordingly, the foregoing estimate of small businesses to which the proposed information collection may apply does not exclude any television stations from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. It is difficult at times to assess this criterion in the context of media entities, and the Commission's estimate of small businesses to which the proposed information collection may apply may be over-inclusive to this extent.

12. *Radio Broadcasting.* The rules and policies proposed herein apply to licensees of noncommercial radio stations, as well as to potential licensees of noncommercial radio stations. The Small Business Administration defines a radio broadcasting entity that has $7 million or less in annual receipts as a small business. Business concerns included in this industry are those ''primarily engaged in broadcasting aural programs by radio to the public.'' According to Commission staff review of the BIA Financial Network, Inc. Media Access Pro Radio Analyzer Database as of February 19, 2009 there are about 3,141 noncommercial radio stations. The FCC does not have revenue data or revenue estimates for these stations. These stations rely primarily on grants and contributions for their operations, so it will assume that all of these entities qualify as small businesses. In assessing whether a business entity qualifies as small under the above definition, business control affiliations must be included. The FCC is unable to include or aggregate revenues from affiliated companies or entities so its assumption may overstate the number of small entities that might be affected by the proposal to require these entities to file Form 323–E.

13. In this context, the application of the statutory definition to radio stations is of concern. An element of the definition of ''small business'' is that the entity not be dominant in its field of operation. The FCC is unable at this time and in this context to define or quantify the criteria that would establish whether a specific radio station is dominant in its field of operation. Accordingly, the foregoing estimate of small businesses to which the rules may apply does not exclude any radio station from the definition of a small business on this basis and is therefore over-inclusive to that extent. An additional element of the definition of ''small business'' is that the entity must be independently owned and operated. The FCC notes that it is difficult at times to assess this criterion in the context of media entities, and its estimate of small businesses to which the proposed information collection may apply may be over-inclusive to this extent.

14. *Low Power FM Stations.* The proposed information collection could affect licensees of low power FM (LPFM) stations, as well as potential licensees in this radio service. The same

SBA definition that applies to radio broadcast licensees would apply to these stations. The SBA defines a radio broadcast station as a small business if such station has no more than $7 million in annual receipts. As of December 31, 2008, there are approximately 859 licensed LPFM stations. Given the nature of these services, the FCC will presume that all of these licensees qualify as small entities under the SBA definition.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

15. The Fourth FNPRM seeks comment on whether to revise Form 323–E, the ownership report for noncommercial educational broadcast licensees, to include minority and gender information. Therefore, the rules might contain modified information collections for noncommercial broadcast licensees. The FCC anticipates that changes in reporting or recordkeeping requirements for noncommercial broadcast entities would result from the changes in the Commission's Form 323–E necessary to implement the proposal to collect gender, race or ethnicity data. In addition, the FCC anticipates that changes in reporting or recordkeeping requirements for LPFM licensees would result from new 323–E filing requirements. The Fourth FNPRM also seeks comment on whether to require low power FM (LPFM) licensees to file, on a biennial basis, Ownership Report, Form 323–E. Therefore, the rules might contain modified information collections for LPFM licensees.

E. Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

16. The RFA requires an agency to describe any significant alternatives that might minimize any significant economic impact on small entities. Such alternatives may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

17. As noted, the FCC is directed under law to describe any such alternatives it considers, including alternatives not explicitly listed above. The Fourth FNPRM seeks comment on the tentative conclusion that obtaining gender and racial/ethnic information from all noncommercial stations would further the FCC's goal to design policies to advance diversity in the broadcast industry. In the alternative, the Commission could defer until a later time collection of such information. The Fourth FNPRM also seeks comment on whether the proposed data collection would impose a significant reporting, recordkeeping, or other compliance burden on noncommercial entities, especially smaller noncommercial entities, and whether there are alternative ways to minimize burdens on NCEs from this proposed reporting requirement. In particular, the Fourth FNPRM recognizes that organizational documents are important in defining a noncommercial entity's structure and mission, including whether it serves underserved audiences. However, the Fourth FNPRM notes that these documents would not provide the same kind of empirical evidence that ownership statistics provide in the commercial context. Therefore, the Fourth FNPRM asks whether looking at the composition of the board of directors or, in the alternative, some other governing entity of a noncommercial station would be adequate for this purpose and whether the information would meaningfully expand the FCC's information on minority and female ownership. In addition, the Fourth FNPRM asks whether to establish a uniform biennial filing date and a uniform date as of which filers must identify ownership interests. In addition, the Fourth FNPRM asks how to assure data quality, including whether improving the computer interface process, building in additional checks for Form 323–E to perform verification and review functions, and ensuring that all data filed is in a format that can be electronically searched, aggregated, and cross-referenced, are appropriate and sufficient. The Fourth FNPRM also seeks comment on the extent of the burden on LPFM licensees, all of which are smaller noncommercial entities. The Commission especially encourages small entities to comment on the proposals in the Fourth FNPRM in this proceeding. The Commission welcomes comment, including presentation of alternatives to or modifications of rules proposed herein, on how to minimize any burdens on small business licensees.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–12310 Filed 5–26–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 240

[Docket No. FRA–2008–0091, Notice No. 3]

RIN 2130–AB95

Qualification and Certification of Locomotive Engineers; Miscellaneous Revisions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice to reopen comment period.

SUMMARY: FRA is reopening the comment period for the notice of proposed rulemaking (NPRM) published on December 31, 2008 (73 FR 80349) which proposed revisions to FRA regulations governing the qualification and certification of locomotive engineers. Reopening the comment period is necessary to provide interested parties the opportunity to submit comments on the information and testimony offered at the public hearing related to the NPRM that was conducted on April 14, 2009. The comment period is reopened until June 15, 2009.

DATES: Written comments must be received by Monday, June 15, 2009. Comments received after that date will be considered to the extent possible without incurring additional expenses or delays.

ADDRESSES: Comments related to Docket No. FRA–2008–0091 may be submitted by any of the following methods:

- *Fax:* 1–202–493–2251;
- *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, 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; or
- Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name

and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION, CONTACT: John L. Conklin, Program Manager, Locomotive Engineer Certification, U.S. Department of Transportation, Federal Railroad Administration, Mail Stop 25, West Building 3rd Floor West, Room W38–208, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: 202–493–6318); or John Seguin, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, RCC–10, Mail Stop 10, West Building 3rd Floor, Room W31–217, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*telephone:* 202–493–6045).

SUPPLEMENTARY INFORMATION: On April 14, 2009, the comment period for the NPRM reopened for thirty (30) days so that FRA could make the public hearing transcript available for review and comment by the general public, interested parties could provide additional comments or documents, and so interested parties could respond to testimony provided at the public hearing. A request for an extension of that comment period, which closed on May 14, 2009, has been filed with the FRA. The request alleges that an interested party was unable to timely comment due to problems accessing the hearing transcript. In light of the request, FRA is reopening the comment period.

Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://www.regulations.gov/search/footer/privacyanduse.jsp.*

Issued in Washington, DC, on May 20, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–12156 Filed 5–26–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

[FWS-R9-MB-2008-0124; 91200-1231-9BPP-L2]

RIN 1018-AW31

Migratory Bird Hunting; Supplemental Proposals for Migratory Game Bird Hunting Regulations for the 2009-10 Hunting Season; Notice of Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), proposed in an earlier document to establish annual hunting regulations for certain migratory game birds for the 2009–10 hunting season. This supplement to the proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, and provides Flyway Council recommendations resulting from their March meetings.

DATES: You must submit comments on the proposed regulatory alternatives for the 2009–10 duck hunting seasons by June 26, 2009. Following subsequent **Federal Register** documents, you will be given an opportunity to submit comments for proposed early-season frameworks by July 31, 2009, and for proposed late-season frameworks and subsistence migratory bird seasons in Alaska by August 31, 2009. The Service Migratory Bird Regulations Committee will meet to consider and develop proposed regulations for early-season migratory bird hunting on June 24 and 25, 2009, and for late-season migratory bird hunting and the 2010 spring/summer migratory bird subsistence seasons in Alaska on July 29 and 30, 2009. All meetings will commence at approximately 8:30 a.m.

ADDRESSES: You may submit comments on the proposals by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, *Attn:* 1018-AW31; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

The Service Migratory Bird Regulations Committee will meet in room 200 of the U.S. Fish and Wildlife Service's Arlington Square Building, 4401 N. Fairfax Dr., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS MBSP-4107-ARLSQ, 1849 C Street, NW, Washington, DC 20240; (703) 358-1714.

SUPPLEMENTARY INFORMATION:

Regulations Schedule for 2009

On April 10, 2009, we published in the **Federal Register** (74 FR 16339) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, and other regulations for hunting migratory game birds under 20.101 through 20.107, 20.109, and 20.110 of subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. We will publish proposed early-season frameworks in early July and late-season frameworks in early August. We will publish final regulatory frameworks for early seasons on or about August 17, 2009, and for late seasons on or about September 14, 2009.

Service Migratory Bird Regulations Committee Meetings

The Service Migratory Bird Regulations Committee will meet June 24-25, 2009, to review information on the current status of migratory shore and upland game birds and develop 2009–10 migratory game bird regulations recommendations for these species, plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands. The Committee will also develop regulations recommendations for September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, the Committee will review and discuss

preliminary information on the status of waterfowl.

At the July 29-30, 2009, meetings, the Committee will review information on the current status of waterfowl and develop 2009–10 migratory game bird regulations recommendations for regular waterfowl seasons and other species and seasons not previously discussed at the early-season meetings. In addition, the Committee will develop recommendations for the 2010 spring/summer migratory bird subsistence season in Alaska.

In accordance with Departmental policy, these meetings are open to public observation. You may submit written comments to the Service on the matters discussed.

Announcement of Flyway Council Meetings

Service representatives will be present at the individual meetings of the four Flyway Councils this July. Although agendas are not yet available, these meetings usually commence at 8 a.m. on the days indicated.

Atlantic Flyway Council: July 23-24, Rodd Charlottetown, Charlottetown, Prince Edward Island, Canada.

Mississippi Flyway Council: July 23-24, Holiday Inn – Manitowoc, Manitowoc, WI .

Central Flyway Council: July 22-24, Radisson Hotel, Bismarck, ND.

Pacific Flyway Council: July 24, Ramada Portland Airport, Portland, OR.

Review of Public Comments

This supplemental rulemaking describes Flyway Council recommended changes based on the preliminary proposals published in the April 10, 2009, **Federal Register**. We have included only those recommendations requiring either new proposals or substantial modification of the preliminary proposals and do not include recommendations that simply support or oppose preliminary proposals and provide no recommended alternatives. Our responses to some Flyway Council recommendations, but not others, are merely a clarification aid to the reader on the overall regulatory process, not a definitive response to the issue. We will publish responses to all proposals and written comments when we develop final frameworks.

We seek additional information and comments on the recommendations in this supplemental proposed rule. New proposals and modifications to previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items identified in the April 10 proposed rule. Only those categories requiring your attention or for which we received Flyway Council recommendations are discussed below.

1. Ducks

Duck harvest management categories are: (A) General Harvest Strategy; (B) Regulatory Alternatives, including specification of framework dates, season length, and bag limits; (C) Zones and Split Seasons; and (D) Special Seasons/Species Management.

A. General Harvest Strategy

Council Recommendations: The Mississippi Flyway Council recommended that regulations changes be restricted to one step per year, both when restricting as well as liberalizing hunting regulations.

Service Response: As we stated in the April 10 **Federal Register**, the final Adaptive Harvest Management protocol for the 2009–10 season will be detailed in the early-season proposed rule, which will be published in mid-July.

B. Regulatory Alternatives

Council Recommendations: The Mississippi and Central Flyway Councils recommended that regulatory alternatives for duck hunting seasons remain the same as those used in 2008.

Service Response: As we stated in the April 10 **Federal Register**, the final regulatory alternatives for the 2009–10 season will be detailed in the early-season proposed rule, which will be published in mid-July.

D. Special Seasons/Species Management

i. Special Teal Seasons

Council Recommendations: The Atlantic Flyway Council recommended that the number of hunting days during the special September teal season in the Atlantic Flyway be increased from 9 consecutive days to 16 consecutive days whenever the blue-winged teal breeding population exceeds 4.7 million birds.

vi. Scaup

Council Recommendations: The Mississippi Flyway Council recommended that the ''restrictive'' regulatory alternative for scaup in the Mississippi Flyway be a 45–day season with a 2-bird daily bag limit and a 15–day season with 1-bird daily bag limit.

The Central Flyway Council recommended modifying the ''restrictive'' regulatory alternative for scaup in the Central Flyway to an option of a 74–day season with a 1-bird daily bag limit, or a 39–day season with a 3-bird daily bag limit, or a 39–day season with a 2-bird daily bag limit and a 35 day season with 1-bird daily bag limit. The Council further recommended that the ''moderate'' and the ''liberal'' alternatives remain unchanged from last year.

Service Response: As we detailed in the April 10 **Federal Register**, potential changes to the configuration of the regulatory packages for scaup for the 2009–10 season will be discussed at the early-season SRC meeting in June 2008 (see **Service Migratory Bird Regulations Committee Meetings** section above) and finalized in the early-season proposed rule, which will be published in mid-July.

4. Canada Geese

B. Regular Seasons

Council Recommendations: The Mississippi Flyway Council recommended that the framework opening date for all species of geese for the regular goose seasons in Michigan and Wisconsin be September 16, 2009.

9. Sandhill Cranes

Council Recommendations: The Mississippi, Central, and Pacific Flyway Councils recommended expanding the area open to Mid-continent population (MCP) sandhill crane hunting in Wyoming to include Johnson and Sheridan Counties.

The Central and Pacific Flyway Councils recommended using the 2009 Rocky Mountain Population (RMP) sandhill crane harvest allocation of 1,939 birds as proposed in the allocation formula using the 3–year running average.

The Pacific Flyway Council recommended extending the experimental, limited hunt for Lower Colorado River sandhill cranes in Arizona for an additional 3 years. The extension is necessary due to difficulties initiating the new hunt, which was approved by the Service in 2007.

16. Mourning Doves

Council Recommendations: The Atlantic and Mississippi Flyway Councils recommended use of the ''moderate'' season framework for States within the Eastern Management Unit population of mourning doves resulting in a 70–day season and 15-bird daily bag limit. The daily bag limit could be composed of mourning doves and white-winged doves, singly or in combination.

The Mississippi and Central Flyway Councils recommend the use of the standard (or ''moderate'') season package of a 15-bird daily bag limit and a 70–day season for the 2009-10 mourning dove season in the States within the Central Management Unit.

The Councils also recommended reducing the boundary for the Special White-winged Dove Area (SSWDA) in Texas by removing portions of Jim Hogg and northern Starr Counties and changing the opening date for dove hunting in the South Zone in Texas to the Friday nearest September 20, but not earlier than September 17.

The Pacific Flyway Council recommended use of the ''moderate'' season framework for States in the Western Management Unit (WMU) population of mourning doves, which represents no change from last year's frameworks.

18. Alaska

Council Recommendations: The Pacific Flyway Council recommended reducing the daily bag limits for brant in Alaska from 3 per day with 6 in possession to 2 per day with 4 in possession.

20. Puerto Rico

Council Recommendations: The Atlantic Flyway Council recommended that Puerto Rico be permitted to adopt a 20-bird bag limit for doves in the aggregate for the next three hunting seasons, 2009–2011. Legally hunted dove species in Puerto Rico are the Zenaida dove, the white-winged dove, and the mourning dove. They also recommended that the 20-bird aggregate bag limit should include no more than 10 Zenaida doves and no more than 3 mourning doves.

Public Comments

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not consider comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section. Finally, we will not consider hand-delivered comments that we do not receive, or mailed comments that are not postmarked, by the date specified in the **DATES** section.

We will post your entire comment—including your personal identifying information—on *http://www.regulations.gov*. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Division of Migratory Bird Management, Room 4107, 4501 North Fairfax Drive, Arlington, VA 22203.

For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date in any final rules.

NEPA Consideration

NEPA considerations are covered by the programmatic document ''Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88-14),'' filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled ''Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands'' is available from the address indicated under the caption **FOR FURTHER INFORMATION CONTACT**.

In a notice published in the September 8, 2005, **Federal Register** (70 FR 53376), we announced our intent to develop a new Supplemental Environmental Impact Statement for the migratory bird hunting program. Public scoping meetings were held in the spring of 2006, as detailed in a March 9, 2006, **Federal Register** (71 FR 12216). We have prepared a scoping report summarizing the scoping comments and scoping meetings. The report is available by either writing to the address indicated under **FOR FURTHER INFORMATION CONTACT** or by viewing on our website at *http://www.fws.gov/migratorybirds*.

Endangered Species Act Consideration

Prior to issuance of the 2009–10 migratory game bird hunting regulations, we will comply with provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543; hereinafter, the Act), to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened, or modify or destroy its critical habitat, and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental rulemaking documents.

Executive Order 12866

The Office of Management and Budget has determined that this rule is significant and has reviewed this rule under Executive Order 12866. A regulatory cost-benefit analysis has been prepared and is available at *http://www.fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov*. OMB bases its determination of regulatory significance upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

(b) Whether the rule will create inconsistencies with other Federal agencies' actions.

(c) Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

(d) Whether the rule raises novel legal or policy issues.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES**

section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Regulatory Flexibility Act

The regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail as part of the 1981 cost-benefit analysis. This analysis was revised annually from 1990–95. In 1995, the Service issued a Small Entity Flexibility Analysis (Analysis), which was subsequently updated in 1996, 1998, 2004, and 2008. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5–year intervals. The 2008 Analysis was based on the 2006 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns, from which it was estimated that migratory bird hunters would spend approximately $1.2 billion at small businesses in 2008.

Copies of the Analysis are available upon request from the address indicated under **ADDRESSES** or from our website at *http://www.fws.gov/migratorybirds/reports/reports.html* or at *http://www.regulations.gov*.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, subpart K, are utilized in the formulation of migratory game bird hunting regulations.

Specifically, OMB has approved the information collection requirements of our Migratory Bird Surveys and assigned control number 1018–0023 (expires 2/28/2011). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations.

OMB has also approved the information collection requirements of the Alaska Subsistence Household Survey, an associated voluntary annual household survey used to determine levels of subsistence take in Alaska, and assigned control number 1018–0124 (expires 1/31/2010).

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

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities. Therefore, this rule is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that this proposed rule will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges and, therefore, reduce restrictions on the use of private and public property.

Energy Effects—Executive Order 13211

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. While this proposed rule is a significant regulatory action under Executive Order 12866, it is not expected to adversely affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Government-to-Government Relationship with Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally-recognized Indian tribes and have determined that there are no effects on Indian trust resources. However, in this proposed rule we solicit proposals for special migratory bird hunting regulations for certain Tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands for the 2009–10 migratory bird hunting season. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with Tribes affected by this rule.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections regarding the hunting of migratory birds, and we employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and tribes to determine which seasons meet their individual needs. Any State or Indian tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This process allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 2009–10 hunting season are authorized under 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j.

Dated: **May 16, 2009**

Will Shafroth,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–12150 Filed 5–26– 09; 8:45 am]

BILLING CODE 4310-55-S

Notices

Federal Register

Vol. 74, No. 100

Wednesday, May 27, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 20, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Rural Business-Cooperative Service

Title: BioRefinery Assistance Programs.

OMB Control Number: 0570–0055.

Summary of Collection: Title IX and section 9003 of the Food, Conservation, and Energy Act of 2008, authorize the Secretary of Agriculture to make loan guarantees for the development and construction of commercial-scale biorefineries and the retrofitting of existing facilities using eligible technology. The program will promote the development of the first commercial scale biorefineries that do not rely on corn kernel starch as the feedstock or standard biodiesel technology for the development of advanced biofuels, giving preference to projects where first-of-a-kind technology will be deployed at viable commercial-scale biorefineries.

Need and Use of the Information: Rural Business Service needs to receive the information contained in this collection of information to make prudent decisions regarding eligibility of applicants and selection priority among competing applicants, to ensure compliance with applicable laws and regulations and to evaluate the projects it believes will provide the most long-term economic benefit to rural areas.

Description of Respondents: Business or other for-profits; State, Local and Tribal Governments; Individuals.

Number of Respondents: 23.

Frequency of Responses: Reporting: Quarterly, Monthly, Annually.

Total Burden Hours: 2,617.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–12184 Filed 5–26–09; 8:45 am]

BILLING CODE 3410–XT–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which approval from the Office of Management and Budget (OMB) will be requested.

DATES: Comments on this notice must be received by July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA–RUS, 1400 Independence Ave., SW., STOP 1522, Room 5162 South Building, Washington, DC 20250–1522. *Telephone:* (202) 690–1078. *Fax:* (202) 720–8435.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d)). This notice identifies an information collection that RUS is submitting to OMB for extension.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Michele L. Brooks, Director, Program Development and Regulatory Analysis, USDA–RUS, STOP 1522, 1400 Independence Ave., SW., Washington, DC 20250–1522. *Fax:* (202) 720–8435.

Title: 7 CFR 1744–C, Advance and Disbursement of Funds—Telecommunications.

OMB Control Number: 0572–0023.

Type of Request: Extension of a currently approved information collection package.

Abstract: The RUS manages the Telecommunications loan program in

accordance with the Rural Electrification Act (RE Act) of 1936, 7 U.S.C. 901 *et seq.*, as amended, and as prescribed by OMB Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables.

In addition, the Farm Security and Rural Investment Act of 2002 (Pub. L. 101–171) amended the RE Act to add Title VI, Rural Broadband Access, to provide loans and loan guarantees to fund the cost of construction, improvement, or acquisition of facilities and equipment for the provision of broadband service in eligible rural communities. RUS therefore requires Telecommunications and Broadband borrowers to submit Form 481, Financial Requirement Statement. This form implements certain provisions of the standard Rural Utilities Service loan documents by setting forth requirements and procedures to be followed by borrowers in obtaining advances and making disbursements of loan funds.

Estimate of Burden: Public reporting for this collection of information is estimated to average 1 hour per response.

Respondents: Business or other for profit, Not-for-profit institutions.

Estimated Number of Respondents: 177.

Estimated Number of Responses per Respondent: 6.3.

Estimated Total Annual Burden on Respondents: 1,223 hours.

Copies of this information collection can be obtained from Joyce McNeil, Program Development and Regulatory Analysis at (202) 720–0812. *Fax:* (202) 720–8435.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 20, 2009.

David J. Villano,

Acting Administrator, Rural Utilities Service.

[FR Doc. E9–12183 Filed 5–26–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Meeting of the Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Land Between The Lakes Advisory Board will hold a meeting on Thursday, June 11, 2009. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Introductions/Orientation/Welcome.

(2) Environmental education updates.

(3) LBL Updates.

(4) Updating the LBL Web site.

(5) Board discussion of comments received.

The meeting is open to the public. Written comments are invited and may be mailed to: William P. Lisowsky, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Written comments must be received at Land Between The Lakes by June 4, 2009, in order for copies to be provided to the members at the meeting. Board members will review written comments received, and at their request, oral clarification may be requested at a future meeting.

DATES: The meeting will be held on June 11, 2009, 9 a.m. to 12 p.m., CDT.

ADDRESSES: The meeting will be held at the Paris Landing State Park, Buchanan, TN, and will be open to the public.

For further information contact: Sharon Byers, Advisory Board Liaison, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270–924–2002.

SUPPLEMENTARY INFORMATION: None.

William P. Lisowsky,

Area Supervisor, Land Between The Lakes.

[FR Doc. E9–12323 Filed 5–26–09; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–814]

Chlorinated Isocyanurates from Spain: Preliminary Results and Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to timely requests by Clearon Corporation and Occidental Chemical Corporation (collectively, ''petitioners''), and Aragonesas Industrias y Energía S.A. (''Aragonesas''), the Department of Commerce (''Department'') is conducting an administrative review of the antidumping duty order on chlorinated isocyanurates (''chlorinated isos'') from Spain with respect to Aragonesas. The period of review (''POR'') is June 1, 2007 through May 31, 2008. In accordance with 19 CFR 351.213(d)(1), the Department is also rescinding this review with respect to Inquide Flix, S.A. (''Inquide'').

The Department preliminarily determines that Aragonesas made U.S. sales of chlorinated isos at prices less than normal value (''NV''). *See Preliminary Results of Review* section, below. If these preliminary results are adopted in our final results of administrative review, the Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. Interested parties are invited to comment on these preliminary results. *See Disclosure and Public Hearing* section, below. Unless extended, we will issue the final results of review no later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 27, 2009.

FOR FURTHER INFORMATION CONTACT: Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2371.

SUPPLEMENTARY INFORMATION: On June 24, 2005, the Department published in the **Federal Register** an antidumping duty order on chlorinated isos from Spain. *See Chlorinated Isocyanurates from Spain: Notice of Antidumping Duty Order*, 70 FR 36562 (June 24, 2005). On June 9, 2008, the Department published a notice of ''Opportunity to Request an Administrative Review'' of the antidumping duty order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 32557 (June 9, 2008). Timely requests for reviews were received from petitioners with respect to Aragonesas and Inquide. The Department also received timely requests from Aragonesas and Inquide with respect to each of their companies. In response to these requests, the Department published a notice of initiation of administrative reviews with respect to Aragonesas and Inquide. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part, and Deferral of Administrative Review*, 73 FR 44220 (July 30, 2008). The POR for this administrative review is June 1, 2007 through May 31, 2008.

On July 22, 2008, Inquide withdrew its request for administrative review. On September 18, 2008, petitioners withdrew their request for review with regard to Inquide. The applicable regulation, 19 CFR 351.213(d)(1), states that if a party that requested an

administrative review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review, the Secretary will rescind the review. In this case both requesting parties withdrew their requests within the time limit. Therefore, we are rescinding this review, in part, with respect to Inquide.

On August 21, 2008, the Department issued an antidumping duty questionnaire to Aragonesas. On September 25, 2008, the Department received Aragonesas' response to section A of the antidumping questionnaire. On October 15, 2008, the Department received Aragonesas' response to sections B and C of the antidumping questionnaire. On October 27, 2008, the Department received Aragonesas' response to section D of the antidumping questionnaire. We issued supplemental questionnaires to Aragonesas on November 26, 2008, December 9, 2008, January 29, 2009, and February 6, 2009. Aragonesas filed a timely response to each supplemental questionnaire.

On February 25, 2009, the Department extended the time limit for the preliminary results by 78 days. *See Chlorinated Isocyanurates from Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 9218 (March 3, 2009).

Scope of the Order

The products covered by the order are chlorinated isocyanurates. Chlorinated isocyanurates are derivatives of cyanuric acid, described as chlorinated s–triazine triones. There are three primary chemical compositions of chlorinated isocyanurates: (1) trichloroisocyanuric acid (Cl3(NCO)3), (2) sodium dichloroisocyanurate (dihydrate) (NaCl2(NCO)3 2H2O), and (3) sodium dichloroisocyanurate (anhydrous) (NaCl2(NCO)3). Chlorinated isocyanurates are available in powder, granular, and tableted forms. The order covers all chlorinated isocyanurates.

Chlorinated isocyanurates are currently classifiable under subheadings 2933.69.6015, 2933.69.6021, and 2933.69.6050 of the Harmonized Tariff Schedule of the United States (''HTSUS''). The tariff classification 2933.69.6015 covers sodium dichloroisocyanurates (anhydrous and dihydrate forms) and trichloroisocyanuric acid. The tariff classifications 2933.69.6021 and 2933.69.6050 represent basket categories that include chlorinated isocyanurates and other compounds including an unfused triazine ring. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Verification

As provided in section 782(i) of the Tariff Act of 1930, as amended (''the Act''), from March 23, 2009 through April 3, 2009, the Department verified the cost and sales information submitted by Aragonesas in its questionnaire responses provided during the course of this review. We used standard verification procedures including examination of relevant accounting and production records, and original source documents provided by the respondent. *See* Memorandum from Robert Greger, Senior Accountant, to The File, ''Verification of the Cost Response of Aragonesas Industrias y Energia, S.A. in the Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain,'' dated May 18, 2009 (''*Cost Verification Report''); see also* Memorandum from Myrna Lobo, International Trade Compliance Analyst, to The File, ''Verification of the Sales Response of Aragonesas Industrias y Energia, S.A. in the Antidumping Duty Administrative Review of Chlorinated Isocyanurates from Spain,'' dated May 18, 2009 (''*Sales Verification Report*''). Both verification reports are on file in the Central Records Unit (CRU), Room 1117 of the main Commerce Building.

Selection of Comparison Market for Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, the Department compared Aragonesas' volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We excluded sales of merchandise that was not foreign like product for reasons that are of a business proprietary nature. *See* Memorandum from Myrna Lobo, International Trade Compliance Analyst, to The File, ''Calculation Memorandum for the Preliminary Results,'' dated May 19, 2009 (''*Preliminary Calculation Memorandum*''). Because Aragonesas' aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of subject merchandise, the Department determines that the home market is viable and sales in the home market can serve as the basis for calculating NV.

Date of Sale

Aragonesas reported invoice date as the date of sale for U.S. and home market sales. The Department's regulations state that ''{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.'' *See* 19 CFR 351.401(i). We examined the questionnaire responses and relevant sales documentation at verification, and determine that invoice date is the appropriate date of sale in both the U.S. and home markets.

However, in accordance with the Department's practice, whenever shipment date precedes invoice date, we used shipment date as the date of sale. *See, e.g., Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 71 FR 18074, 18079–80 (April 10, 2006), remaining unchanged in *Stainless Steel Sheet and Strip in Coils From the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007); and *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results of Antidumping Duty Administrative Review and New Shipper Review and Determination To Revoke in Part*, 72 FR 62630 (November 6, 2007) and accompanying Issues and Decision Memorandum at Issue 2, where the Department found ''that it is appropriate to use the earlier of shipment or invoice date as Colakoglu's and Habas' U.S. date of sale in the instant review, consistent with the date–of-sale methodology established in the previous review.''

Comparisons to Normal Value

To determine whether Aragonesas sold chlorinated isos in the United States at prices less than NV, the Department compared the export price (''EP'') of individual U.S. sales to the weighted–average NV of sales of the foreign like product made in the ordinary course of trade in a month contemporaneous with the month in which the U.S. sale was made. *See* sections 777A(d)(2) and 773(a)(1)(B)(i) of the Act.

Section 771(16) of the Act defines foreign like product as merchandise that is identical or similar to subject merchandise and produced by the same person and in the same country as the subject merchandise. Thus, we considered all products covered by the scope of the order that were produced by the same person and in the same country as the subject merchandise, and sold by Aragonesas in the home market during the POR, to be foreign like products for the purpose of determining appropriate product comparisons to chlorinated isos sold in the United States.

Product Comparisons

In accordance with section 771(16) of the Act, the Department considered all products produced by the respondent, covered by the description in the ''Scope of the Order'' section above, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Pursuant to 19 CFR 351.414(e)(2), the Department compared U.S. sales made by Aragonesas to sales made in the home market within the contemporaneous window period, which extends from three months prior to the U.S. sale until two months after the sale. Where there were no sales of identical merchandise in the comparison market made in the ordinary course of trade to compare to U.S. sales, the Department compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, the Department used the physical characteristics determined by the Department, and reported by Aragonesas, to match foreign like products to U.S. sales: chemical structure, free available chlorine content, physical form, and packaging.

Export Price

The Department based the price of Aragonesas' U.S. sales on EP methodology, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly by Aragonesas to the first unaffiliated purchaser in the United States prior to importation and the constructed export price (''CEP'') methodology was not otherwise indicated. We based EP on packed prices to unaffiliated purchasers in the United States. Aragonesas reported its U.S. sales on a delivered, duty paid basis. We made deductions from the starting price, where appropriate, for billing adjustments, foreign inland freight, international freight, foreign inland and marine insurance, foreign and U.S. brokerage and handling, U.S. inland freight, commissions and U.S. duty, in accordance with section 772(c)(2) of the Act and 19 CFR 351.402. We also made some corrections and adjustments to international freight, brokerage and handling, inventory carrying costs and indirect selling expenses based on our findings at verification. *See Preliminary Calculation Memorandum.*

Normal Value

After testing home market viability, whether home market sales to affiliates were at arm's–length prices, and whether home market sales were at below–cost prices, we calculated NV for Aragonesas as noted in the ''Calculation of Normal Value Based on Comparison Market Prices'' section of this notice, below.

A. Arm's Length Test

The Department may calculate NV based on a sale to an affiliated party only if it is satisfied that the price to the affiliated party is comparable to the prices at which sales are made to parties not affiliated with the exporter or producer, *i.e.*, sales at arm's–length. *See* 19 CFR 351.403(c). Sales to affiliated customers for consumption in the home market that are determined not to be at arm's–length are excluded from our analysis. In this proceeding, Aragonesas reported sales of the foreign like product to one affiliated customer. To test whether these sales were made at arm's–length prices, the Department compared the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Pursuant to 19 CFR 351.403(c), and in accordance with the Department's practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's–length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186, 69187 (November 15, 2002). In this instance, Aragonesas' sales to the affiliated home market customer did not pass the arm's–length test, and we therefore excluded those sales from our analysis. See section 773(b)(1) of the Act. *See also Preliminary Calculation Memorandum.*

B. Cost of Production Analysis

In the most recently completed review, the Department disregarded sales made at prices that were below cost of production (''COP''). *See Chlorinated Isocyanurates from Spain: Final Results of Antidumping Duty Administrative Review*, 73 FR 79789 (December 30, 2008). As a result, in accordance with section 773(b)(2)(A)(ii) of the Act, in this review the Department determined that there are reasonable grounds to believe or suspect that Aragonesas sold the foreign like product at prices below the cost of producing the product during the instant POR. Accordingly, the Department required that Aragonesas provide a response to Section D of the questionnaire.

1. Calculation of Cost of Production

In accordance with section 773(b)(3) of the Act, for each product, sorted by control number, sold by Aragonesas during the POR, the Department calculated Aragonesas' weighted–average COP based on the sum of its materials and fabrication costs, plus amounts for general and administrative expenses and interest expenses. *See* ''Test of Comparison Market Sales Prices'' section below for treatment of home market selling expenses. We relied on the COP information provided by Aragonesas in its questionnaire responses. We made some adjustments to the COP information based on our findings at the cost verification. These adjustments are detailed in the Memorandum to Neal Halper, ''Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results for Aragonesas Industrias y Energia S.A.'' dated May 19, 2009 (*Preliminary Cost Memorandum). See also Cost Verification Report.*

2. Test of Comparison Market Sales Prices

In order to determine whether sales were made at prices below the COP, on a product–specific basis, the Department compared Aragonesas adjusted weighted–average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act. In accordance with sections 773(b)(1)(A) and (B) of the Act, in determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. The prices were inclusive of billing adjustments and exclusive of any applicable movement charges, discounts and rebates, direct and indirect selling expenses, and

packing expenses, revised where appropriate.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales of a given product are at prices less than the COP, the Department does not disregard any below cost sales of that product, because the Department determines that in such instances the below cost sales were not made within an extended period of time and in ''substantial quantities.'' Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP, the Department disregards the below cost sales because they: (1) were made within an extended period of time in ''substantial quantities,'' in accordance with section 773(b)(2)(B) and (C) of the Act; and (2) based on our comparison of prices to the weighted–average COPs for the POR, were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Based on the results of our test, we found that, for certain products, more than 20 percent of Aragonesas' home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Normal Value Based on Comparison Market Prices

We based NV on the prices at which the foreign like product was first sold by Aragonesas for consumption in the home market, in the usual commercial quantities, in the ordinary course of trade, and, to the extent possible, at the same level of trade (''LOT'') as the comparison U.S. sale. We excluded sales of merchandise that was not foreign like product, for reasons that are of a business proprietary nature. *See Preliminary Calculation Memorandum.* We calculated NV for Aragonesas using the reported gross unit prices to unaffiliated purchasers. Aragonesas reported that it offers its home market customers the following terms of delivery: cost and freight, carriage insurance paid, carriage paid, delivered duty paid, delivered duty unpaid, ex–works/free carrier, and free on truck. Where appropriate, the Department made adjustments to the starting price for billing adjustments. We deducted home market movement expenses pursuant to section 773(a)(6)(B) of the Act. At the sales verification, Aragonesas could not locate an inland freight invoice pertaining to a few home market observations. For these few observations, as facts available under section 776(a)(2)(A) of the Act, we are using the average freight expense Aragonesas incurred to that customer. We deducted, where appropriate, discounts and rebates, pursuant to section 773(a)(6)(B)(ii) of the Act. We also made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, the Department made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit and warranty expenses. We also deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6)(A) and (B) of the Act. Further, based on our findings at verification, we made corrections to inland freight and we recalculated indirect selling expenses, inventory carrying costs and rebates. *See Sales Verification Report. See also Preliminary Calculation Memorandum.*

We also made the appropriate adjustment where necessary for commissions paid in the home market pursuant to 773(a)(6)(C)(iii) of the Act and19 CFR 351.410(c). We made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (*i.e.*, commission offset). Specifically, where commissions are incurred in one market, but not in the other, we limited the amount of such allowance to the amount of either the indirect selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same LOT as the EP or CEP sales in the U.S. market (Aragonesas had only EP sales in the U.S. market). The NV LOT is based on the starting price of the sales in the comparison market. Where NV is based on CV, the Department determines the NV LOT based on the LOT of the sales from which the Department derives selling expenses, general and administrative expenses, and profit for CV, where possible. For EP sales, the U.S. LOT is based on the starting price of the sales to the U.S. market.

To determine whether NV sales are at a different LOT than EP sales, the Department examines stages in the marketing process and level of selling functions along the chain of distribution between the producer and the customer. *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). When the Department is unable to match U.S. sales to foreign like product sales in the comparison market at the same LOT as the EP sale, the Department may compare the U.S. sales to sales at a different LOT in the comparison market. In comparing EP sales at a different LOT in the comparison market, where the difference affects price comparability, as manifested by a pattern of consistent price differences between comparison–market sales at the NV LOT and comparison–market sales at the LOT of the export transaction, the Department makes an LOT adjustment under section 773(a)(7)(A) of the Act.

In this administrative review, Aragonesas had only EP sales in the U.S. market, thus the CEP methodology was not employed in this review. The Department obtained information from Aragonesas regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed for each channel of distribution. Aragonesas reported that it made EP sales in the U.S. market through a single distribution channel (*i.e.*, sales to industrial users). Because all sales in the United States are made through a single distribution channel, we preliminarily determine that there is one LOT in the U.S. market.

For the home market, Aragonesas reported that it made sales through three channels of distribution (*i.e.*, industrial customers, retail customers, and distributors), noting that the selling functions are more or less identical for retail and distributor sales. We compared the selling functions performed by Aragonesas for these distribution channels and found that Aragonesas performed similar selling activities in the home market for the retail and distributor channels of distribution, and fewer selling activities for industrial home market customers. Thus, we preliminarily find that the retail and distributor channels of distribution constitute one NV LOT, while the channel of distribution for

industrial customers constitutes a second NV LOT. Pursuant to section 773(a)(7)(ii) of the Act, where sales in the U.S. market are matched with sales in the home market at a more advanced LOT (*i.e.*, retail and distributor channels of distribution), the Department will grant an LOT adjustment to NV if there is a consistent pattern of price differences. Therefore, we compared prices at the two LOTs in the home market and found that a consistent pattern of price differences does not exist between the LOTs. Therefore, an LOT adjustment is not warranted. *See Preliminary Calculation Memorandum.*

Currency Conversion

Pursuant to section 773A(a) of the Act, we converted amounts expressed in foreign currencies into U.S. dollar amounts based on the exchange rates in effect on the dates of the U.S. sales, as reported by the Federal Reserve Bank of the United States.

Preliminary Results of Review

As a result of this review, the Department preliminarily determines that the weighted–average dumping margin for the period June 1, 2007 through May 31, 2008 is as follows:

Manufacturer/Exporter	Weighted-Average Margin (percentage)
Aragonesas Industrias y Energía S.A.	45.50

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the company listed above will be that established in the final results of this review, except if the rate is less than 0.50 percent, and therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit rate will continue to be the company–specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, or the original less than fair value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 24.83 percent, the ''All Others'' rate made effective by the LTFV investigation. *See Chlorinated Isocyanurates From Spain: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 24506 (May 10, 2005). These requirements, when imposed, shall remain in effect until further notice.

Assessment Instructions

Upon publication of the final results of this review, the Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries exported by Aragonesas. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. In accordance with 19 CFR 351.212(b)(1), we will calculate importer–specific assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total quantity of the examined sales. These rates will be assessed uniformly on all entries of the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department intends to issue appropriate assessment instructions directly to CBP 15 days after the date of publication of the final results of this review.

This notice constitutes rescission of the administrative review of Inquide. The Department will issue appropriate assessment instructions directly to CBP 15 days after the date of publication of this notice.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*''). This clarification applies to entries of subject merchandise during the POR produced by any company included in the final results of review for which the reviewed company did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, the Department will instruct CBP to liquidate unreviewed entries at the ''All Others'' rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Disclosure and Public Hearing

We will disclose the calculations used in our analysis to parties to this segment of the proceeding within five days of the public announcement of this notice. *See* 19 CFR 351.224(b). Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless the time period is extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice in the **Federal Register**. *See* 19 CFR 351.309(c). Rebuttal briefs, which must be limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. *See* 19 CFR 351.309(d). Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities cited. Further, we request that parties submitting written comments provide the Department with an electronic copy of the public version of such comments. Case and rebuttal briefs must be served on interested parties, in accordance with 19 CFR 351.303(f).

Unless extended, the Department will issue the final results of this administrative review, including the results of its analysis of issues raised in any written briefs, not later than 120 days after the date of publication of this notice, pursuant to section 751(a)(3)(A) of the Act.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are published in accordance with

sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221.

Dated: May 19, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–12293 Filed 5–26–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Tuesday, June 16, 2009. The Judges Panel is composed of twelve members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce. The purpose of this meeting is to discuss the Judging process and Judging process changes for 2009; the role of the Judges Panel in the award process; an overview of scoring data; the 2009 Baldrige Award cycle; the Judges Panel survey of applicants; and the Judges Panel mentoring process. Under each of these categories applicant information may be disclosed. The applications under review by the Judges Panel contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 16, 2009 at 9 a.m. and adjourn at 4:30 p.m. on June 16, 2009. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, Baldrige National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 08, 2009, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and other organizations and a discussion of these data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 20, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–12284 Filed 5–26–09; 8:45 am]

BILLING CODE 3510–13–P

CONSUMER PRODUCT SAFETY COMMISSION

Agency Emergency Processing Under Office of Management and Budget Review; Chronic Hazard Advisory Panel Questionnaire

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission (Commission or CPSC) is announcing that a collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995. The proposed collection of information concerns a questionnaire to panel candidates for selection to a Chronic Hazard Advisory Panel (CHAP) to study the effects of phthalates and phthalate alternatives on children's health.

DATES: Comments on this request for approval of information collection requirements should be submitted by June 26, 2009.

ADDRESSES: Comments on this request for approval of information collection requirements should be captioned ''Emergency Request—Chronic Hazard Advisory Panel'' and submitted to (1) the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for CPSC, Office of Management and Budget, Washington, DC 20503; *telephone:* (202) 395–7340, or by e-mail to *Brenda_Aguilar@omb.eop.gov* and (2) to the Office of the Secretary by e-mail at *cpsc-os@cpsc.gov,* or mailed to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814. Comments may also be sent via facsimile at (301) 504–0127.

FOR FURTHER INFORMATION CONTACT: Linda Glatz, Division of Policy and Planning, Office of Information Technology and Technology Services, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; *telephone:* (301) 504–7671, or by e-mail to *lglatz@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

A. Proposed Collection of Information

Section 108(b)(2)(A) of the Consumer Product Safety Improvement Act of 2008 (CPSIA) (Pub. L. 110–314) requires the Commission to begin the process of appointing a CHAP pursuant to 15 U.S.C. 2077 to study the effects on children's health of all phthalates and phthalate alternatives as used in children's toys and child care articles. Section 108(b)(2)(B) of the CPSIA specifies what the panel is to examine and requires the panel to complete its examination within 18 months after its appointment. The panel must report to the CPSC no later than 180 days after completing its examination, and, no later than 180 days after receiving the panel's report, the CPSC must promulgate a final rule to determine whether an interim prohibition on three specific phthalates should remain in effect and evaluate the panel's findings and recommendation.

In order to establish the CHAP and execute the mandatory rulemaking within the statutory deadlines imposed under the CPSIA, the CPSC requests emergency processing of the collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j) and 5 CFR 1320.13). The CPSC will provide a questionnaire to 27 panel candidates to identify potential conflicts of interest. With respect to this collection of information, the CPSC estimates the burden of this collection will be approximately 1 hour. The total estimated burden to all candidates is 27 hours. The annual reporting cost is estimated to be $1,481.76. This estimate is based on the estimated total burden hours for responding to the questionnaire (27 hours) multiplied by an estimated wage (*Bureau of Labor Statistics:* All workers, good-producing industries, management, professional and related, September 2008) of $54.88 per hour (27 hours × $54.88 per hour = $1,481.76).

B. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of

information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: May 20, 2009.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E9–12148 Filed 5–26–09; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

Office of Innovation and Improvement; Overview Information; Teacher Quality Partnership Grants Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.405A.

Dates:

Applications Available: May 27, 2009.

Deadline for Notice of Intent to Apply: June 26, 2009.

Dates of Pre-Application Meeting: There will be two pre-application meetings for prospective applicants on June 8, 2009 from 10:00 a.m. to 12:00 p.m. and on June 8, 2009 from 2:00 p.m. to 4:00 p.m.

Deadline for Transmittal of Applications: July 23, 2009.

Deadline for Intergovernmental Review: September 21, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purposes of the Teacher Quality Partnership (TQP) Grants Program are to: Improve student achievement; improve the quality of new and prospective teachers by improving the preparation of prospective teachers and enhancing professional development activities for new teachers; hold teacher preparation programs at institutions of higher education (IHEs) accountable for preparing highly qualified teachers; and recruit highly qualified individuals, including minorities and individuals from other occupations, into the teaching force.

More specifically, the TQP Grants Program seeks to improve the quality of new teachers by creating partnerships among IHEs, high-need school districts (local educational agencies (LEAs)) their high-need schools, and/or high-need early childhood education (ECE) program. These partnerships would create model teacher preparation programs at the pre-baccalaureate level through the implementation of specific reforms of the IHE's existing teacher preparation programs, and/or model teaching residency programs for individuals with strong academic and/or professional backgrounds but without teaching experience. The TQP Grants Program may also support school leadership programs to train superintendents, principals, ECE program directors, and other school leaders in high-need or rural LEAs.

General Application Requirements: All applicants must meet the following general application requirements in order to be considered for funding. Except as specifically noted in this section, the general application requirements are from section 202 of the Higher Education Act of 1965, as amended in 2008 by the Higher Education Opportunity Act (HEA) (20 U.S.C. 1022(a)).

Each eligible partnership desiring a grant under this program must submit an application that contains—

(a) A needs assessment of the partners in the partnership, for the preparation, ongoing training, professional development, and retention of general education and special education teachers, principals, and, as applicable, early childhood educators;

(b) A description of how the partnership will—

(1) Prepare prospective and new general education and special education teachers to understand and use research and data to modify and improve classroom instruction and prepare prospective and new teachers with strong teaching skills;

(2) Support in-service professional development strategies and activities;

(3) Engage faculty at the partner institution to work with highly qualified teachers in the classrooms of high-need schools served by the high-need LEA in the partnership in order to—

(i) Provide high-quality professional development to strengthen the content knowledge and teaching skills of elementary school and secondary school teachers; and

(ii) Train other classroom teachers to implement literacy programs that incorporate the essential components of reading instruction;

(4) Design, implement, or enhance a year-long and rigorous teaching preservice clinical program component;

(5) Prepare general education teachers to teach students with disabilities, including training related to participation as a member of individualized education program teams, as defined in section 614(d)(1)(B) of the Individuals with Disabilities Education Act (IDEA);

(6) Prepare general education and special education teachers to teach limited English proficient students; and

(7) Collect, analyze, and use data on the retention of all teachers and early childhood educators in high-need schools and high-need ECE programs located in the geographic area served by the partnership to evaluate the effectiveness of the partnership's teacher and educator support system;

(c) A description of the induction program activities that demonstrates—

(1) That the schools and departments within the IHE that are part of the induction program will effectively prepare teachers, including providing content expertise and expertise in teaching, as appropriate;

(2) The eligible partnership's capability and commitment to, and the accessibility to and involvement of faculty in, the use of empirically-based practice and scientifically valid research on teaching and learning;

(3) How faculty involved in the induction program will be able to substantially participate in a high-need ECE program or a high-need elementary school or high-need secondary school classroom setting, as applicable, including release time and receiving workload credit for such participation; and

(4) How the teacher preparation program will support, through not less than the first two years of teaching, all new teachers who are prepared by the teacher preparation program in the partnership and who teach in the high-need LEA in the partnership, and, to the extent practicable, all new teachers who teach in such high-need LEA, in the further development of the new teachers' teaching skills, including the use of mentors who are trained and compensated by the program for the mentors' work with new teachers;

(d) A description of how the partnership will—

(1) Coordinate strategies and activities with other teacher preparation or professional development programs, including programs funded under the

Elementary and Secondary Education Act of 1965, as amended (ESEA), and the IDEA, and through the National Science Foundation; and how those activities will be consistent with State, local, and other education reform activities that promote teacher quality and student academic achievement; and

(2) Align the teacher preparation program with the—

(i) State early learning standards for ECE programs, as appropriate, and with the relevant domains of early childhood development; and

(ii) Student academic achievement standards and academic content standards under section 1111(b)(2) of the ESEA, established by the State in which the partnership is located;

(e) An assessment that describes the resources available to the partnership, including—

(1) The integration of funds from other related sources;

(2) The intended use of the grant funds; and

(3) The commitment of the resources of the partnership to the activities assisted under this program, including financial support, faculty participation, and time commitments, and to the continuation of the activities when the grant ends;

(f) A description of the partnership's evaluation plan that includes strong and measurable performance objectives, including objectives and measures for increasing—

(1) Achievement for all prospective and new teachers and their students, as measured by the eligible partnership. The HEA permits the Secretary to establish additional requirements for applications under this program. In that regard, in addition to the statutory requirement that each application describe in its evaluation plan the objectives and measures for increasing the achievement for prospective and new teachers, we also require the application to describe objectives and measures for increasing the achievement of students taught by teachers who have participated in the projects. As one of the key statutory purposes of the TQP Grants Program is to improve student achievement (section 201(1) of the HEA) we believe that any evaluation of the performance of the projects funded under this program should include an assessment of the impact of the project on student achievement and that applicants should describe the objectives and measures for doing so in their evaluation plan;

(2) Teacher retention in the first three years of a teacher's career;

(3) Improvement in the pass rates and scaled scores for initial State certification or licensure of teachers;

(4) The percentage of highly qualified teachers hired by the high-need LEA participating in the eligible partnership, including the percentage of those teachers—

(i) Who are members of underrepresented groups;

(ii) Who teach high-need academic subject areas (such as reading, mathematics, science, and foreign language, including less commonly taught languages and critical foreign languages);

(iii) Who teach in high-need areas (including special education, language instruction educational programs for limited English proficient students, and ECE); and

(iv) Who teach in high-need schools, disaggregated by the elementary school and secondary school levels;

(5) As applicable, the percentage of ECE program classes in the geographic area served by the eligible partnership taught by early childhood educators who are highly competent; and

(6) As applicable, the percentage of teachers trained—

(i) To integrate technology effectively into curricula and instruction, including technology consistent with the principles of universal design for learning; and

(ii) To use technology effectively to collect, manage, and analyze data to improve teaching and learning for the purpose of improving student academic achievement; and

(g) A description of—

(1) How the partnership will meet the purposes of the TQP Grants Program as specified in section 201 of the HEA;

(2) How the partnership will carry out the activities required under section 202(d) of the HEA (Partnership Grants for Pre-Baccalaureate Preparation of Teachers) and/or section 202(e) of the HEA (Partnership Grants for the Establishment of Teaching Residency Programs); and

(3) If the partnership chooses to use funds under the TQP Grants Program for a project or activities under section 202(f) of the HEA (Partnership Grants for the Development of Leadership Programs) or section 202(g) of the HEA (Partnership with Digital Education Content Developer), how the partnership will carry out the project or required activities based on the needs identified in the needs assessment described in paragraph (a), with the goal of improving student academic achievement.

Program Evaluation Requirements: All applicants must cooperate with the national evaluation contractor selected by ED to evaluate the TQP Grants Program. This will include responding to modest data requests by the evaluation contractor (for example, requested program information and program participant information such as GRE or SAT scores and contact information).

Priorities: This notice contains two absolute priorities, four competitive preference priorities, and one invitational priority that are explained in the following paragraphs.

Absolute Priorities: In accordance with 34 CFR 75.105(b)(2)(iv), Absolute Priority 1 is from section 202(d) of the HEA and Absolute Priority 2 is from section 202(e) of the HEA. For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3) we consider only applications that meet one or both of these absolute priorities. These priorities are:

Absolute Priority 1: Partnership Grants for Pre-Baccalaureate Preparation of Teachers. Under this priority, an eligible partnership must carry out an effective program for the pre-baccalaureate preparation of teachers that includes all of the following:

(a) *Program Accountability.* Implementation of reforms, described in paragraph (b) of this priority, within each of the partnership's teacher preparation programs and, as applicable, each of the partnership's preparation program for ECE programs, to hold each program accountable for—

(1) Preparing—

(i) New or prospective teachers to be highly qualified (including teachers in rural school LEAs who may teach multiple subjects, special educators, and teachers of students who are limited English proficient who may teach multiple subjects);

(ii) Such teachers and, as applicable, early childhood educators, to understand empirically-based practice and scientifically valid research related to teaching and learning and the applicability of such practice and research, including through the effective use of technology, instructional techniques, and strategies consistent with the principles of universal design for learning, and through positive behavioral interventions and support strategies to improve student achievement; and

(iii) As applicable, early childhood educators to be highly competent; and

(2) Promoting strong teaching skills and, as applicable, techniques for early

childhood educators to improve children's cognitive, social, emotional, and physical development.

(b) *Specific reforms.* The reform of the quality of each teacher preparation program, or each ECE program, by—

(1) Implementing teacher preparation program curriculum changes that improve, evaluate, and assess how well all prospective and new teachers develop teaching skills;

(2) Ensuring collaboration with departments, programs, or units of a partner institution outside of the teacher preparation program in all academic content areas to ensure that prospective teachers receive training in both teaching and relevant content areas in order to become highly qualified (which may include training in multiple subjects to teach multiple grade levels as may be needed for individuals preparing to teach in rural communities and for individuals preparing to teach students with disabilities as described in section 602(10)(D) of the IDEA);

(3) Developing admission goals and priorities aligned with the hiring objectives of the high-need LEA in the eligible partnership;

(4) Implementing program and curriculum changes, as applicable, to ensure that prospective teachers have requisite content knowledge, preparation, and degree to teach Advanced Placement or International Baccalaureate courses successfully;

(5) Developing and implementing an induction program for new teachers, or in the case of an ECE program, providing mentoring or coaching for new early childhood educators as described in paragraph (f) of this priority; and

(6) Using empirically based practice and scientifically valid research, where applicable, about teaching and learning so that all prospective students, and as applicable, early childhood educators—

(i) Understand and can implement research based teaching practices in classroom instruction;

(ii) Can successfully employ effective strategies for reading instruction using the essential components of reading instruction;

(iii) Possess skills to analyze student academic achievement data and other measures of student learning, and use such data and measures to improve classroom instruction;

(iv) Can effectively participate as a member of the individualized education program team, as defined in section 614(d)(1)(B) of the IDEA;

(v) Have knowledge of student learning methods; and

(vi) Possess teaching skills and an understanding of effective instructional strategies across all applicable content areas that enable general education and special education teachers and early childhood educators in order to—

(A) Meet the specific learning needs of all students, including students with disabilities, students who are limited English proficient, students who are gifted and talented, students with low literacy levels, children in ECE programs; and

(B) Differentiate instruction for these students.

(c) *Literacy training.* Strengthening the literacy teaching skills of prospective and, as applicable, new elementary and secondary school teachers to—

(1) Implement literacy programs that incorporate the essential components of reading instruction;

(2) Use screening, diagnostic, formative and summative assessments to determine students' literacy levels, difficulties, and growth in order to improve classroom instruction and improve student reading and writing skills;

(3) Provide individualized, intensive, and targeted literacy instruction for students with deficiencies in literacy skills; and

(4) Integrate literacy skills in the classroom across subject areas.

(d) *Clinical experience.* Development and implementation (or improvement) of a sustained and high-quality preservice clinical education program, offered over the course of a program of teacher preparation, to further develop the teaching skills of all prospective teachers, and as applicable, early childhood educators involved in the project. This preservice clinical education program must—

(1) Incorporate year-long opportunities for enrichment, including—

(i) Clinical learning in classrooms in high-need schools served by the high-need LEA in the eligible partnership, and identified by the eligible partnership; and

(ii) Closely supervised interaction between prospective teachers and faculty, experienced teachers, principals, other administrators, and school leaders at ECE programs (as applicable), elementary schools, or secondary schools, and providing support for such interaction;

(2) Integrate pedagogy and classroom practices and effective teaching skills in academic content areas;

(3) Provide high-quality teacher mentoring;

(4) Be tightly aligned with course work (and may be developed as a fifth year of a teacher preparation program);

(5) Where feasible, allow prospective teachers to learn to teach in the same LEA in which the teachers will work, learning the instructional initiatives and curriculum of that LEA; and

(6) As applicable, provide training and experience to enhance the teaching skills of prospective teachers to better prepare such teachers to meet the unique needs of teaching in rural or urban communities.

(e) *Support for program participation.* The provision of support and training for individuals participating in an activity for prospective or new teachers, whether in the teacher preparation program (or program for early childhood educators), the clinical experience, or in the LEA's induction program for new teachers, and for individuals who serve as mentors for these teachers, based on each individual's experience. This support and training may include—

(1) With respect to a prospective teacher or a mentor, release time for such individual's participation;

(2) With respect to a mentor, a stipend, which may include bonus, differential, incentive, or performance pay, based on the mentor's extra skills and responsibilities; and

(3) With respect to a faculty member, the receipt of course workload credit and compensation for time teaching in the eligible partnership's activities.

(f) *Participants in an ECE program.* Where a project focuses on preparation of early childhood educators, implementation of initiatives that increase compensation for early childhood educators who attain associate or baccalaureate degrees in ECE.

(g) *Teacher recruitment.* Development and implementation of effective mechanisms (which may include alternative routes to State certification of teachers) to ensure that the eligible partnership is able to recruit qualified individuals to become highly qualified teachers through the activities of the eligible partnership. These mechanisms may include an emphasis on recruiting into the teaching profession—

(1) Individuals from under represented populations;

(2) Individuals to teach in rural communities and teacher shortage areas, including mathematics, science, special education, and the instruction of limited English proficient students; and

(3) Mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

Absolute Priority 2: Partnership Grants for the Establishment of Effective Teaching Residency Programs. Under this priority, an eligible partnership

must carry out a teaching residency program for high-need subjects and areas, as determined by the needs of the high-need LEA in the partnership. The program must ensure that teaching residents who participate in the teaching residency program receive the preparation and support described in the following required program components:

(a) *Establishment and design.* The teaching residency program must be based upon models of successful teaching residencies that serve as a mechanism to prepare teachers for success in the high-need schools in the eligible partnership, and be designed to include the following characteristics of successful programs:

(1) Integration of pedagogy, classroom practice, and teacher mentoring.

(2) Engagement of teaching residents in rigorous graduate-level course work to earn a master's degree while undertaking a guided teaching apprenticeship.

(3) Grouping of teaching residents in cohorts to facilitate professional collaboration among such residents.

(4) The development of admissions goals and priorities—

(i) That are aligned with the hiring objectives of the high-need LEA partnering with the program, as well as the instructional initiatives and curriculum of the high-need LEA, in exchange for a commitment by the high-need LEA to hire qualified graduates from the teaching residency program; and

(ii) Which may include consideration of applicants who reflect the communities in which they will teach as well as consideration of individuals from underrepresented populations in the teaching profession.

(5) Experience and learning opportunities alongside a trained and experienced mentor teacher—

(i) Whose teaching complements the residency program so that classroom clinical practice is tightly aligned with coursework;

(ii) Who has been given extra responsibilities—

(A) As a teacher leader of the teaching residency program;

(B) As a mentor for residents;

(C) As a teacher coach during the induction program for new teachers; and

(D) For establishing, within the program, a learning community in which all individuals are expected to continually improve their capacity to advance student learning; and

(iii) Who may be relieved, if appropriate, from teaching duties as a result of these additional responsibilities.

(6) The establishment of clear criteria for the selection of mentor teachers based on measures of teacher effectiveness and the appropriate subject area knowledge. For purposes of this section, evaluation of teacher effectiveness must be based on, but not limited to, observations of the following:

(i) Planning and preparation, including demonstrated knowledge of content, pedagogy, and assessment, including the use of formative and diagnostic assessments to improve student learning.

(ii) Appropriate instruction that engages students with different learning styles.

(iii) Collaboration with colleagues to improve instruction.

(iv) Analysis of gains in student learning, based on multiple measures that are valid and reliable and that, when feasible, may include valid, reliable, and objective measures of the influence of teachers on the rate of student academic progress.

(v) In the case of mentor candidates who will be mentoring new or prospective literacy and mathematics coaches or instructors, appropriate skills in the essential components of reading instruction, teacher training in literacy instructional strategies across core subject areas, and teacher training in mathematics instructional strategies, as appropriate.

(7) Support for teaching residents, once they are hired as teachers of record, through an induction program, professional development, and networking opportunities to support the residents through not less then the residents' first two years of teaching.

(b) *Additional support for residents after completing the program.* In addition to the services described in paragraph (a)(7) of this priority, a partnership must place graduates of the teaching residency program in cohorts that facilitate professional collaboration, both among graduates of the teaching residency program and between such graduates and mentor teachers in the receiving school.

(c) *Selection of individuals as teacher residents.*

(1) In order to be eligible to be a teacher resident in a teaching residency program, an individual must be a recent graduate of a four-year IHE or a mid-career professional from outside the field of education possessing strong content knowledge or a record of professional accomplishment, and submit an application to the teaching residency program.

(2) An eligible partnership must establish criteria for the selection of eligible individuals to participate in the teaching residency program based on the following characteristics—

(i) Strong content knowledge or record of accomplishment in the field or subject area to be taught;

(ii) Strong verbal and written communication skills, which may be demonstrated by performance on appropriate tests; and

(iii) Other attributes linked to effective teaching, which may be determined by interviews or performance assessments, as specified by the eligible partnership.

(d) *Provision of stipends or salaries.*

(1) A teaching residency program must provide a one-year living stipend or salary during the one-year teaching residency program to any teacher resident candidate accepted into the program who requests the stipend or salary and submits the application described in paragraph (d)(2) of this priority.

(2) Each teaching residency candidate desiring a living stipend or salary during the one-year period of the residency must submit an application to the eligible partnership at such time, and containing such information and assurances, as the eligible partnership may require.

(3) Each application submitted under paragraph (d)(2) of this priority, must contain or be accompanied by an agreement that the applicant will—

(i) Serve as a full-time teacher for a total of not less than three academic years immediately after successfully completing the one-year teaching residency program;

(ii) Fulfill the requirement under paragraph (d)(3)(i) of this priority by teaching in a high-need school served by the high-need LEA in the eligible partnership and teach a subject or area that is designated as high need by the partnership;

(iii) Provide to the eligible partnership a certificate, from the chief administrative officer of the high-need LEA in which the teacher resident is employed, documenting the employment required under paragraph (d)(3)(i) and (ii) of this priority at the beginning of, and upon completion of, each year or partial year of service;

(iv) Meet the requirements to be a highly qualified teacher, as defined in section 9101 of the ESEA, or section 602 of the IDEA, when the applicant begins to fulfill the service obligation under the program; and

(v) Comply with the requirements established by the eligible partnership under paragraph (e) of this priority if the

applicant is unable or unwilling to complete the service obligation required by the paragraph.

(e) *Repayments.*

(1) Each grantee carrying out a teaching residency program must require a recipient of a stipend or salary under paragraph (d)(1) of this priority who does not complete, or who notifies the partnership that he or she intends not to complete, the service obligation required by paragraph (d)(3) of this priority to repay the stipend or salary to the eligible partnership—

(i) Together with interest at a rate specified by the partnership in the agreement; and

(ii) In accordance with such other terms and conditions specified by the eligible partnership, as necessary.

(2) Other terms and conditions specified by the eligible partnership may include, among other things, reasonable provisions for pro-rata repayment of the stipend or salary described in paragraph (e)(1) of this priority, or for deferral of a teaching resident's service obligation required by paragraph (d)(3) of this priority, on grounds of health, incapacitation, inability to secure employment in a school served by the eligible partnership, being called to active duty in the Armed Forces of the United States, or other extraordinary circumstances.

(3) An eligible partnership must use any repayment received under paragraph (e) to carry out additional activities that are consistent with the purposes of the Teaching Residency program.

Competitive Preference Priorities: Within these absolute priorities, we give competitive preference to applications that address one or more of the following priorities. For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, these priorities are competitive preference priorities.

Competitive Preference Priority 1: We are establishing Competitive Preference Priority 1 in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 10 points to an application that meets Competitive Preference Priority 1, depending on how well the application meets the priority. We will add any competitive preference priority points only to highly rated applications on one or both of the absolute priorities.

This priority is:

Competitive Preference Priority 1: Student Achievement and Continuous Program Improvement. The Secretary gives priority to applications from an eligible partnership that would use appropriate means to—

(1) Collect and use data on student achievement to assess the effect of teachers prepared through the pre-baccalaureate teacher preparation and/or teaching residency program on student learning in the classrooms of the high-need schools in which they work; to be eligible to receive the maximum number of points, applicants must demonstrate their capacity to include longitudinal data capturing student achievement by teacher from year to year, and

(2) Provide for continuous improvement of the participating teachers, and of the pre-baccalaureate teacher preparation program and/or teaching residency program based on these data.

Our purpose in establishing this priority is to support the collection and use of data showing the effect of teachers on student learning and achievement. The relevant data would include both teachers in the program and teachers not in the program. As noted earlier, a key statutory purpose of this program is to improve student achievement. Having these data will enable grantees both to assess the effectiveness of their projects and to use the data to improve the project's impact on student achievement.

Competitive Preference Priority 2: Competitive Preference Priority 2 is from section 202(f) of the HEA. As used in this priority, the definition of ''LEA located in a rural area'' is established in accordance with section 437(d)(1) of the General Education Provisions Act (GEPA), 20 U.S.C. 1232(d)(1). Under 34 CFR 75.105(c)(2)(i) we award up to an additional 5 points to an application that meets Competitive Preference Priority 2, depending on how well the application meets the priority. We will add any competitive preference priority points only to highly rated applications on one or both of the absolute priorities.

This priority is:

Competitive Preference Priority 2: Partnership Grants for the Development of Leadership Programs. Under this competitive preference priority the Secretary gives priority to applications from eligible partnerships that propose to carry out an effective school leadership program that will prepare individuals enrolled or preparing to enroll in those programs for careers as superintendents, principals, ECE program directors, or other school leaders (including individuals preparing to work in LEAs located in rural areas who may perform multiple duties in addition to the role of a school leader). An eligible partnership may carry out the school leadership program either in the partner high-need LEA or in further partnership with an LEA located in a rural area.

The school leadership program carried out under this priority must include the following activities:

(a) *Preparation of school leaders.* In preparing school leaders, the school leadership program must include the following activities:

(1) Promoting strong leadership skills and, as applicable, techniques for school leaders to effectively—

(i) Create and maintain a data-driven, professional learning community within the leader's schools;

(ii) Provide a climate conducive to the professional development of teachers, with a focus on improving student achievement and the development of effective instructional leadership skills;

(iii) Understand the teaching and assessment skills needed to support successful classroom instruction and to use data to evaluate teacher instruction and drive teacher and student learning;

(iv) Manage resources and school time to improve student academic achievement and ensure a safe school environment;

(v) Engage and involve parents, community members, the LEA, businesses, and other community leaders, to leverage additional resources to improve student academic achievement; and

(vi) Understand how students learn and develop in order to increase academic achievement for all students.

(2) Developing and improving a sustained and high-quality preservice clinical education program to further develop the leadership skills of all prospective school leaders involved in the program. This clinical education program must do the following:

(i) Incorporate year-long opportunities for enrichment, including—

(A) Clinical learning in high-need schools served by the high-need LEA or an LEA located in a rural area in the eligible partnership and identified by the eligible partnership; and

(B) Closely supervised interaction between prospective school leaders and faculty, new and experienced teachers, and new and experienced school leaders, in those high-need schools.

(ii) Integrate pedagogy and practice and promote effective leadership skills, meeting the unique needs of urban, rural, or geographically isolated communities, as applicable.

(iii) Provide for mentoring of new school leaders.

(3) Creating an induction program for new school leaders.

(4) Ensuring that individuals who participate in the school leadership program receive—

(i) Effective preservice preparation as described in paragraph (a)(2) of this priority;

(ii) Mentoring; and

(iii) If applicable, full State certification or licensure to become a school leader.

(5) Developing and implementing effective mechanisms to ensure that the eligible partnership is able to recruit qualified individuals to become school leaders through activities that may include an emphasis on recruiting into school leadership professions—

(i) Individuals from underrepresented populations;

(ii) Individuals to serve as superintendents, principals, or other school administrators in rural and geographically isolated communities and school leader shortage areas; and

(iii) Mid-career professionals from other occupations, former military personnel, and recent college graduates with a record of academic distinction.

(b) *Selection of Participants.* In order to be eligible for the school leadership program, an individual must—

(i) Be enrolled in or preparing to enroll in an IHE;

(ii) Be a—

(A) Recent graduate of an IHE;

(B) Mid-career professional from outside the field of education with strong content knowledge or a record of professional accomplishment;

(C) Current teacher who is interested in becoming a school leader; or

(D) School leader who is interested in becoming a superintendent; and

(iii) Submit an application to the school leadership program containing such information as the eligible partnership may require.

Section 202(g) of the HEA, like this priority, permits an eligible partnership to implement a school leadership program in an LEA that is not a high-need LEA provided the LEA is located in a rural area. However, the statute does not define the phrase ''LEA located in a rural area,'' for the purpose of this priority. The National Center for Educational Statistics (NCES), which has established locale codes based on geographic location, and assigned codes to all LEAs, considers an LEA with an assigned locale code of 31, 32, 33, 41, 42, or 43 as located in a rural area. (Codes 41–43 correspond with former locale codes 7 and 8 used to determine eligibility for the Small Rural School Achievement program; while codes 31–33 correspond to former locale code 6 used to help determine eligibility for the Rural Low Income Schools program.) In order to extend the potential benefits of the TQP School Leadership program to as many rural LEAs as possible, we have determined that any LEA assigned any of these six locale codes may qualify under this TQP program as an ''LEA located in a rural area.''

Prospective applicants may determine whether a particular LEA has one of these six locale codes by referring to the following Web site: *http://www.nces@ed.gov* and using the following procedures:

a. From the options listed across the top of this Web page, select ''School, & College Library Search.''

b. From the menu that appears, select ''Search for School Districts.''

c. On the ''Search for Public School Districts'' page, type in the LEA or school district name (do not include phrases like ''School District'' or ''Public Schools'' that follow the name, and the State in which it is located. Then select ''Search.''

d. From the list of LEAs shown, select the appropriate LEA. On the ''District Information'' page, the NCES locale code for the district is shown under the subheading ''District Details'', next to ''Locale.''

Competitive Preference Priorities 3 and 4: Competitive Preference Priorities 3 and 4 are from section 203(b)(2) of the HEA. Under 34 CFR 75.105(c)(2)(ii) we give preference to an application that meets one or both of these priorities over an application of comparable merit that does not meet the priorities.

These priorities are:

Competitive Preference Priority 3: Rigorous Selection Process. Eligible partnerships that include an IHE whose teacher preparation program has a rigorous process for selecting students entering the program to ensure the highest quality of students entering the program.

Competitive Preference Priority 4: Broad-based Partners. Applications from broad-based eligible partnerships with significant involvement of businesses or community organizations.

Invitational Priority: Within Absolute Priorities 1 and 2, we are particularly interested in applications that address the following invitational priority. For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1) we do not give an application that meets this invitational priority a competitive or absolute preference over other applications.

This priority is:

Partnership with Digital Education Content Developer. Consistent with section 202(g) of the HEA, we are interested in receiving applications that propose to use grant funds to carry out one or both of the absolute priorities, through partnerships with a television public broadcast station, as defined in section 397(6) of the Communications Act of 1934, as amended (47 U.S.C. 397(6)), or another entity that develops digital educational content, for the purpose of improving the quality of pre-baccalaureate teacher preparation programs or to enhance the quality of preservice training for prospective teachers.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities, selection criteria, definitions, and other requirements. Section 437(d)(1) of GEPA, however, allows the Secretary to exempt from rulemaking requirements, regulations governing the first grant competition under a new or substantially revised program authority. This is the first grant competition for the TQP Grants Program authorized by section 202 of the HEA, and it therefore qualifies for this exemption. In order to ensure timely grant awards, the Secretary has decided to forego public comment on (a) the requirement that grantees include in their evaluations objectives and measures for improving student achievement; (b) Competitive Preference Priority 1; (c) the definition of ''LEA located in a rural area'' in Competitive Preference Priority 2, (d) the requirement that a required member of the eligible partnership be the fiscal agent for the grant; (e) the Teacher Need component of the definition of ''high-need LEA''; and (f) the selection criteria, Quality of the Project Design and Significance, under section 437(d)(1) of GEPA. These priorities, definitions, and selection criteria will apply to the FY 2009 grant competition and any subsequent year in which we make awards from the list of unfunded applicants from this competition.

Program Authority: 20 U.S.C. 1021–1022(c).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except Federally recognized Indian Tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $143,000,000: $43,000,000 from the Department of Education's FY 2009 appropriation and $100,000,000 from the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law No. 111–5. The purposes of the ARRA include the following:

(1) To preserve and create jobs and promote economic recovery;

(2) To assist those most impacted by the recession;

(3) To provide investments needed to increase economic efficiency by spurring technological advances in science and health;

(4) To invest in transportation, environmental protection, and other infrastructure that will provide long-term economic benefit; and

(5) To stabilize State and local government budgets in order to minimize and avoid reductions in essential services and counterproductive State and local tax increases.

Estimated Range of Awards: $1,000,000–$2,000,000.

Estimated Average Size of Awards: $1,500,000.

Estimated Number of Awards: 25–35.

Note: The Department is not bound by any estimates in this notice. The Department will first fund applications with FY 2009 appropriations. If the Department does not receive enough quality applications, the Department may re-open the competition.

Project Period: 60 months.

III. Eligibility Information

1. *Eligible Applicants:* An eligible applicant must be an ''eligible partnership'' as defined in section 200(6) of the HEA. The fiscal agent of the grant must be one of the required partners in the eligible partnership, as described in section 200 of the HEA. We are establishing this requirement in accordance with section 437(d)(1) of GEPA to ensure that a required member of the partnership is responsible for the administration of the grant. The eligible partnership means an entity that—

(1) Must include each of the following:

(i) A high-need LEA.

(ii) A high-need school or consortium of high-need schools served by the high-need LEA, or, as applicable, a high-need ECE program.

(iii) A partner institution.

(iv) A school, department, or program of education within such partner institution, which may include an existing teacher professional development program with proven outcomes within a four-year IHE that provides intensive and sustained collaboration between faculty and LEAs consistent with the requirements of Title II of the HEA.

(v) A school or department of arts and sciences within such partner institution; and

(2) May include any of the following:

(i) The Governor of the State.

(ii) The State educational agency.

(iii) The State board of education.

(iv) The State agency for higher education.

(v) A business.

(vi) A public or private nonprofit educational organization.

(vii) An educational service agency.

(viii) A teacher organization.

(ix) A high-performing LEA, or a consortium of high-performing LEAs, that can serve as a resource to the partnership.

(x) A charter school (as defined in section 5210 of the ESEA).

(xi) A school or department within the partner institution that focuses on psychology and human development.

(xii) A school or department within the partner institution with comparable expertise in the disciplines of teaching, learning, and child and adolescent development.

(xiii) An entity operating a program that provides alternative routes to State certification of teachers.

Definitions: For purposes of the definition of ''eligible partnership,'' the following definitions are from section 200 of the HEA, as amended.

(1) *High-Need Local Educational Agency:* To be eligible as a ''high-need LEA,'' an LEA must establish that it meets one of the criteria for requisite poverty or geographic location in component (i), below, and one of the requisite criteria for teacher need in component (ii). Thus, under section 200(10) of the HEA, the term ''high-need LEA'' means an LEA—

(i)(A) For which not less than 20 percent of the children served by the agency are children from low-income families;

(B) That serves not fewer than 10,000 children from low-income families;

(C) That meets the eligibility requirements for funding under the Small, Rural School Achievement (SRSA) Program under section 6211(b) of the ESEA, or

(D) That meets eligibility requirements for funding under the Rural and Low-Income School Program under section 6221(b) of the ESEA;

(ii) And—

(A) For which there is a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach; or

(B) There is a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.

So that the Department may be able to confirm the eligibility of the LEAs participating in the partnership as ''high-need LEAs,'' applicants will need to include information in their applications that demonstrates that each participating LEA in the partnership meets the above definition of ''high-need.'' This information must be based on the most recent data available.

Poverty Data. Under component (i)(A) or (i)(B) of the definition of ''high-need LEA,'' an LEA must show that not less than 20 percent of the children served by the LEA are children from low-income families or that the LEA serves fewer than 10,000 children from low-income families. Under section 200(2) of the HEA (20 U.S.C. 1021(2)), the term ''children from low-income families'' means children described in section 1124(c)(1)(A) of the ESEA (20 U.S.C. 6333(c)(1)(A)). Consistent with that provision, the eligibility of an LEA as a ''high-need LEA'' under component (i)(A) or (i)(B) must be determined on the basis of the most recent U.S. Census Bureau data, which is currently for 2007. U.S. Census Bureau data are available for all LEAs with geographic boundaries that existed when the U.S. Census Bureau collected its information. The link to the most recent census data is: *http://www.census.gov/hhes/www/saipe/district.html.* The Department also makes these data available at its Web site at: *http://www.ed.gov/programs/lsl/eligibility.html.*

Some LEAs, such as newly formed LEAs or charter schools in States that accord them LEA status, are not included in Census Bureau poverty data. Eligibility of these particular LEAs will be determined on a case-by-case basis after review of information in the application that addresses, as well as possible, the number or percentage of children from low-income families these LEAs serve.

Eligibility under the Small Rural School Achievement (SRSA) Program or Rural and Low-Income School (RLIS) Program. Under component (i)(C) or (i)(D) of the definition of ''high-need LEA,'' an LEA may show that it is eligible for the SRSA or RLIS programs authorized in the ESEA. Prospective applicants may determine whether a particular LEA is eligible for these programs by referring to information available on the following Department Web sites. For the SRSA: *http://*

www.ed.gov/programs/reapsrsa/eligible08/index.html.

For the RLIS: *http://www.ed.gov/programs/reaprlisp/eligibility.html.*

Teacher Need. Under component (ii)(A) or (ii)(B) of the definition of a ''high-need LEA,'' to be a ''high-need'' LEA, an LEA must have (A) a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach, or (B) either a high teacher turnover rate, or a high percentage of teachers with emergency, provisional, or temporary certification or licensure.

Under component (ii)(A) of Teacher Need, for purposes of the TQP Grants Program, and in accordance with section 437(d)(1) of GEPA, an LEA has ''a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach'' if either:

(1) The percentage of its classes taught by teachers of core academic subjects who are not highly qualified exceeds the average percentage for the State in which the LEA is located; or

(2) The applicant submits other information, which the Department accepts, that the percentage of the LEA's teachers who lack training in the academic subject areas or grade levels in which the teachers were trained to teach perhaps because of the short amount of training that many highly qualified teachers may have received before becoming teachers of record, is ''high.'' Assuming that the Department accepts the applicant's information, the Department will determine eligibility under this test on a case-by-case basis if the percentage of teachers who lack training in the subject area or grade levels they were trained to teach is below five percent.

Section 1119 of the ESEA requires that all of an LEA's teachers of core academic subjects be highly qualified by the end of the 2005–2006 school year, and we know that most LEAs are relatively close to meeting this goal. Because highly qualified teachers are generally teachers with sufficient knowledge or training in the subject they teach, we believe the percentage of an LEA's classes taught by teachers who are not highly qualified (data that SEAs and LEAs must publicly report under section 1111(h)(1)(C)(vii) and (h)(2)(B) of the ESEA, respectively), is a reasonable proxy for the ''percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach.'' In order to extend eligibility to as many LEAs as possible we provide that an LEA has a ''high percentage'' of these teachers if the percentage of its classes taught by teachers who are not highly qualified exceeds the State's average.

At the same time, we recognize that LEAs that do not meet this test may also have a high percentage of teachers not teaching in the academic subject areas or grade levels in which the teachers were trained to teach. For example, an LEA might (1) be in a State with a very high average for LEAs statewide, or (2) have many teachers who, while highly qualified in one or more academic subject areas, are teaching an academic subject or grade level for which they are not highly qualified or have little training. In order to accommodate these other situations, we will determine on a case-by-case basis, and based on the data a partnership submits with its application, whether other LEAs also have a ''high percentage'' of such teachers.

Regarding component (ii)(B) of Teacher Need, an LEA is considered to meet this component of ''high-need'' if it demonstrates that it has either a high teacher turnover rate or a high percentage of teachers with emergency, provisional, or temporary certification or licensure. In determining what is a ''high teacher turnover rate'' for purposes of this program, pursuant to section 437(d)(1) of GEPA we adopt, with one minor difference, the same interpretation of this phrase that the Department used under the HEA Teachers for a Competitive Tomorrow (TCT) Baccalaureate and Master's programs. For reasons explained in the notice inviting applications for new FY 2008 awards under the baccalaureate program (*see* 73 FR 31835, 31837, June 4, 2008), we thus determine that a ''high teacher turnover rate'' means an annual attrition rate of 16 percent among classroom teachers who did not return to the same school in the LEA, *i.e.,* those teachers who moved the following year to a different school as well as those who left teaching altogether. We adopt this 16 percent rate rather than the 15 percent rate used in the previously authorized HEA Teacher Quality Enhancement Grants program regulations referenced in the TCT notice because the higher rate better reflects the more current data on which ED relied. Consistent with the discussion in the TCT notice, an LEA may calculate this attrition rate by averaging data over the last three years.

The alternative criterion in component (ii)(B) of the definition of ''high-need LEA'' provides that the LEA must have a high percentage of teachers with emergency, provisional, or temporary certification or licensure. In accordance with section 437(d)(1) of GEPA, and for reasons the Department discussed in the April 30, 2004 notice announcing requirements for the Transition to Teaching Program (69 FR 24001, 24003), the Department adopts the same standard used in that program authorized in Title II, Part C of the ESEA. This standard relies on data that States collect for each LEA on the percentage of teachers in the LEA who are teaching on waivers of State certification, for inclusion in the reports on the quality of teacher preparation that the States provide to the Department in October of each year as required by section 207 of the HEA, as previously authorized.

Consistent with the approach the Department has taken in the Transition to Teaching program, which includes this same criterion in its eligibility requirements, the Department will consider an LEA as meeting the teacher need component of the definition of ''high-need LEA'' if LEA data the State used for purpose of the State's October 2008 HEA, section 207 report on teachers teaching on waivers of State certification demonstrate that at least 1.37 percent of its teachers (the national average for all 2008 HEA, State reports submitted under section 207 of the HEA, as previously authorized) were on waivers of State certification requirements.

(2) *High-Need School:* Under section 200(11) of the HEA, the term ''high-need school'' means a school that, based on the most recent data available, meets at least one of the following:

(i) The school is in the highest quartile of schools in a ranking of all schools served by an LEA, ranked in descending order by percentage of students from low-income families enrolled in such schools, as determined by the LEA based on one of the following measures of poverty:

(A) The percentage of students aged 5 through 17 in poverty counted in the most recent census data approved by the Secretary;

(B) The percentage of students eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act;

(C) The percentage of students in families receiving assistance under the State program funded under Part A of Title IV of the Social Security Act;

(D) The percentage of students eligible to receive medical assistance under the Medicaid program; or

(E) A composite of two or more of the measures described in paragraphs (A) through (D).

(ii) If the school is—

(A) An elementary school, not less than 60 percent of its students are

eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act; or

(B) Not an elementary school, not less than 45 percent of its students are eligible for a free or reduced price school lunch under the Richard B. Russell National School Lunch Act.

Note: For criterion (i)(A), the only school-level data for these criteria of which the Department is aware are those that concern eligibility for free and reduced price school lunches (paragraph (i)(B)). In addition criterion (ii)(A) does not itself permit an LEA to determine that a middle school or high school is a ''high-need school'' on the basis of the percentage of students attending its feeder schools that are eligible for free and reduced price school lunch subsidies. However, the Special Rule found in Section 200(11)(B)(i) of the HEA allows the Secretary, upon approval of an application submitted by an eligible partnership, to designate a school as a high-need school for purposes of this program even though that school does not meet the definition of ''high need'' under the above definition. Specifically, section 200(11)(B)(i) permits the Secretary to approve an eligible partnership's application to designate any school as a high-need school based on consideration of the specific information identified in section 200(11)(B)(ii) and, at the Secretary's option, any other information the eligible partnership submits.

The need that middle and high schools located in high-poverty areas served by high-need LEAs have for more able, higher quality teachers is abundantly clear. However, while criterion (i)(A) requires a high-need school to have a minimum percentage of its students eligible for free and reduced price school lunch subsidies, it is common knowledge that, as students get older, the percentage of them choosing to apply for these lunch subsidies decreases.

We do not believe that Congress intended to erect such a barrier to the ability of middle and high schools located in high-poverty areas to be able to benefit from teachers trained through the pre-baccalaureate teacher preparation program or teaching residency program. Therefore, the Secretary will identify a middle or high school as ''high-need'' if—

(a) The aggregate level of poverty of the school's feeder schools, based on the aggregate percentage of their students eligible for free and reduced price school lunch subsidies, yields the percentage provided in section 200(11)(A)(ii); and

(b) The eligible applicant provides in its application the information identified in section 200(11)(B)(ii).

(3) *High-Need Early Childhood Education Program:* Under section 200(9) of the HEA, the term ''high-need ECE program'' means an ECE program serving children from low-income families that is located within the geographic area served by a high-need LEA.

(4) *Partner Institution:* Under section 200(17) of the HEA, the term ''partner institution'' means an IHE, which may include a two-year IHE offering a dual program with a four-year IHE, participating in an eligible partnership that has a teacher preparation program—

(i) Whose graduates exhibit strong performance on State-determined qualifying assessments for new teachers through—

(A) Demonstrating that 80 percent or more of the graduates of the program who intend to enter the field of teaching have passed all of the applicable State qualification assessments for new teachers, which shall include an assessment of each prospective teacher's subject matter knowledge in the content area in which the teacher intends to teach; or

(B) Being ranked among the highest-performing teacher preparation programs in the State as determined by the State using criteria consistent with the requirements for the State report card under section 205(b) of the HEA before the first publication of the report card.

(ii) And that requires—

(A) Each student in the program to meet high academic standards or demonstrate a record of success, as determined by the institution (including prior to entering and being accepted into a program), and participate in intensive clinical experience;

(B) Each student in the program preparing to become a teacher to become ''highly qualified'' (as defined in section 9010(23) of the ESEA); and

(C) Each student in the program preparing to become an ''early childhood educator'' to meet degree requirements, as established by the State, and become ''highly competent.''

Note: For purposes of paragraph (ii)(C) of this definition, the term ''highly competent,'' under section 200(12) of the HEA, means the early child educator has—

(a) Specialized education and training in development and education of young children from birth up to entry into kindergarten; and

(b)(i) A baccalaureate degree in an academic major in the arts and sciences; or

(ii) An associate's degree in a related educational area; and

(c) Demonstrated a high level knowledge and use of content and pedagogy in the relevant areas associated with quality ECE.

(5) *Additional Definitions:* Definitions for the following terms that apply to this program are in section 200 of the HEA: ''arts and sciences,'' ''early childhood educator,'' ''highly qualified,'' ''induction program,'' ''limited English proficient,'' ''professional development,'' ''scientifically valid research,'' ''teacher mentoring'' and ''teaching residency program.''

2. *Cost Sharing or Matching:*

(1) Under section 203(c) of the HEA (20 U.S.C. 1022(b)), each grant recipient must provide, from non-Federal sources, an amount equal to 100 percent of the amount of the grant, which may be provided in cash or in-kind, to carry out the activities supported by the grant. Grantees must budget their matching contributions on an annual basis relative to each annual award of Teacher Quality Partnership Program funds.

However, the HEA also authorizes the Secretary to waive this matching requirement for any partnership for any fiscal year if the Secretary determines that ''applying the matching requirement to the eligible partnership would result in serious hardship or an inability to carry out the authorized activities described in'' the law. In view of the impact of the Nation's current economic difficulties on the fiscal situation of so many LEAs and IHEs, for purposes of this competition the Secretary will waive up to 100 percent of the required match for each of the first two years of the grant based on a certification of serious hardship from the applicant that is included in the application. The Department will not at this time entertain a request for a waiver of the matching requirement for project years three through five, and applicants must provide a proposed non-Federal budget for these project years. Applicants who do not request a waiver or who request a waiver for only a portion of the matching amount in years one and two must provide a non-Federal budget for the required portion of their years one and two match that they intend to provide.

(2) *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements. In accordance with section 202(k) of the HEA funds made available under this program must be used to supplement, and not supplant other Federal, State, and local funds that would otherwise be expended to carry out activities under this program.

IV. Application and Submission Information

1. *Address To Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If

you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.405A.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Notice of Intent To Apply: June 26, 2009.

The Department will be able to develop a more efficient process for reviewing grant applications if it has a better understanding of the number of entities that intend to apply for funding under this competition. Therefore, the Secretary strongly encourages each potential applicant to notify the Department by sending a short e-mail message indicating the applicant's intent to submit an application for funding. The e-mail need not include information regarding the content of the proposed application, only the applicant's intent to submit it. The Secretary requests that this e-mail notification be sent to Peggi Zelinko at *TQPartnership@ed.gov.* Applicants that fail to provide this e-mail notification may still apply for funding.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. It is recommended that the application narrative (Part III) be no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions. However, you may single space all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section (Part III).

3. *Submission Dates and Times:*

Applications Available: May 27, 2009.

Deadline for Notice of Intent To Apply: June 26, 2009.

Date of Pre-Application Meeting: There will be two pre-application meetings for prospective applicants: (1) June 8, 2009, from 10:00 a.m. to 12:00 p.m. in the LBJ Auditorium at the U.S. Department of Education headquarters, 400 Maryland Avenue, SW., Washington, DC 20202; and (2) June 8, 2009 from 2:00 p.m. to 4:00 p.m. in the LBJ Auditorium at the U.S. Department of Education headquarters, 400 Maryland Avenue, SW., Washington, DC 20202. The Department is accessible by Metro on the Blue, Orange, Green, and Yellow lines at the 7th Street and Maryland Avenue exit of the L'Enfant Plaza Metro Station. Please contact the U.S. Department of Education contact persons listed under **FOR FURTHER INFORMATION CONTACT** if you have any questions about the details of the pre-application meetings.

Individuals interested in attending this workshop are encouraged to pre-register by e-mailing their name, organization, and contact information to *TQPartnership@ed.gov.* There is no registration fee for this workshop.

Assistance to Individuals With Disabilities at the Pre-Application Meeting: The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you will need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (*e.g.,* other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Deadline for Transmittal of Applications: July 23, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants site. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV.6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 21, 2009.

4. *Intergovernmental Review:* This competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

(a) *Electronic Submission of Applications.* Applications for grants under the Teacher Quality Partnership—CFDA Number 84.405A must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement and submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an

electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. E-Application will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: The Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an automatic acknowledgment that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2)(a) E-Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E-Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgment of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (*see* VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Peggi Zelinko, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W306, Washington, DC 20202–5960. *Fax:* (202) 401–8466.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.* If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.405A), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before

relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.405A), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this grant notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria governing this competition are listed in the following paragraphs. The selection criterion, Quality of Project Evaluation, is from 34 CFR 75.210 in the Education Department General Administrative Regulations (EDGAR) and section 204 of the HEA. The selection criterion, Quality of the Management Plan, is from 34 CFR 75.210 in EDGAR. The selection criterion, Quality of the Project Design, includes a combination of the factors under that criterion in 34 CFR 75.210(c) EDGAR and the criterion, Quality of Project Services in 34.210(d); specifically, factor (2)(i) is from 34 CFR 75.210(c) and factors (2)(ii), (iii) and (iv) are from 34 CFR 75.210(d). The selection criterion, Significance, includes a combination of the factors under that criterion in 34 CFR 75.210(b) and the criterion, Quality of Project Personnel, in 34 CFR 75.210(e); specifically, factors (2)(i), (ii) and (iii) are from section 34 CFR 75.210(b) and factor (2)(iv) is from section 34 CFR 75.210(e). We are combining these factors under these specific criteria to provide greater clarity on how applicants should address the criteria in their applications.

The maximum score for all of the selection criteria is 100 points. The maximum score for each criterion is indicated in parentheses with the criterion. These criteria are for the FY 2009 grant competition and any subsequent year in which we make awards based on the list of unfunded applicants from this competition only.

(a) *Quality of the Project Design* (up to 40 points).

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the extent to which the proposed project consists of a comprehensive plan that includes a description of—

(i) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for this competition;

(ii) The likely impact of the services to be provided by the proposed project on the intended recipients of those services;

(iii) The extent to which the training or professional development services to be provided by the proposed project are of sufficient quality, intensity, and duration to lead to improvements in practice among the recipients of those services; and

(iv) The extent to which the services to be provided by the proposed project involve the collaboration of appropriate partners for maximizing the effectiveness of project services.

Note: The Secretary encourages applicants to address this criterion by discussing the overall project design and its key components, and the degree to which the design's key components are based on sound research and practice. Applicants are also encouraged to address this criterion by connecting the project design to the intended impact of the project and how the project will affect the participants, including preparation, placement, retention, and effect on improved student achievement. Finally, applicants are encouraged to discuss the role and commitment of each partner and document each partner's responsibilities and commitment to the project.

(b) *Quality of the Project Evaluation* (up to 25 points).

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers—

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to intended outcomes of the project and will produce quantitative and qualitative data to the extent possible;

(ii) The extent to which the methods of evaluation address the evaluation requirements in section 204(a) of the HEA; and

(iii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Note: The Secretary encourages applicants to include a plan of how the project's evaluation will address the TQP Grants Program performance measures established by the Department under the Government Performance and Results Act of 1993 (GPRA). (The specific performance measures established for the overall TQP Grants Program are discussed under *Performance Measures* in section VI of this notice.) Further, each applicant is encouraged to describe how the applicant's evaluation plan will be designed to collect both output data and outcome data including benchmarks to monitor progress. Finally, each applicant is encouraged to select an independent, objective evaluator who has experience in evaluating educational programs and who will play an active role in the design and development of the project. For resources on what to consider in designing and conducting project evaluations, go to *www.whatworkshelpdesk.ed.gov/.*

(c) *Significance* (up to 20 points).

(1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors—

(i) The likelihood that the proposed project will result in system change or improvement;

(ii) The extent to which the proposed project is likely to build local capacity to provide, improve, or expand services that address the needs of the target population;

(iii) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement; and

(iv) The potential for continued support of the project after Federal funding ends, including, as appropriate, the demonstrated commitment of appropriate entities to such support.

Note: The Secretary encourages applicants to describe the use of a needs assessment to determine the specific needs of project participants and how the project will address these needs. Applicants are also encouraged to indicate how the project will affect teaching and student achievement in the proposed service area. Finally, applicants are encouraged to include a description of the commitment to build local capacity for the

project and how this capacity building will be achieved.

(d) *Quality of the Management Plan* (up to 15 points).

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors—

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks;

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project; and

(iii) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project.

Note: The Secretary encourages applicants to address these criteria by including in the application narrative a clear, well thought-out implementation plan that includes annual timelines, key project milestones, and a schedule of activities with sufficient time for developing an adequate implementation plan, as well as a description of the personnel who would be responsible for each activity and the level of effort each activity entails.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

Applicants are encouraged to include in their budgets funds for at least two project staff members to attend two meetings of the TQP Grants Program in Washington DC during each year of the project.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html.*

Some of the funds awarded through this program were appropriated under the American Recovery and Reinvestment Act (ARRA) of 2009, Public Law 111–5, and are subject to additional accountability and transparency reporting requirements, which are described in section 1512(c) of the ARRA. Grantees receiving funds provided by the ARRA must be able to distinguish these funds from any other funds they receive through this program. Recipients of ARRA funds will be required to submit quarterly reports on the expenditure of these funds no later than ten days after the end of each calendar quarter through a centralized reporting Web site administered by the Office of Management and Budget (OMB): *http://www.federalreporting.gov.* The information reported at this Web site will be available to the Department, the White House, OMB and the public on *http://www.Recovery.gov.* Additional guidance providing further detail on the quarterly report will be provided at a later time.

4. *Performance Measures:* The objective of the TQP Grants Program is to increase student achievement in K–12 schools by developing highly qualified teachers. Under GPRA, the following measures will be used by the Department in assessing the performance of this program:

(a) *Performance Measure 1: Graduation.* The percentage of program completers who—

(1) Attain initial certification/licensure by passing all necessary certification/licensure assessments and attain a bachelor's degree (pre-baccalaureate program) within six years of beginning the program or a master's degree (residency program) within two years of beginning the program; or

(2) Attain Highly Competent Early Childhood Educator status by earning a bachelor's degree within six years of beginning the program or an associate's degree within three years of beginning the program.

(b) *Performance Measure 2: Employment Retention.* The percentage of beginning teachers who are retained in teaching in the partner high-need LEA or high-need ECE program three years after being hired by the high-need LEA or high-need ECE program;

(c) *Performance Measure 3: Improved Scores.* The percentage of grantees that report improved scaled scores on assessments for initial State certification or licensure of teachers;

(d) *Efficiency Measure: Employment Retention.* The cost of a successful outcome where success is defined as retention of the teacher in the partner high-need LEA or high-need ECE program three years after the teacher is hired by the high-need LEA or high-need ECE program;

(e) *Short-Term Performance Measures.* Because the performance measures already listed would not provide data for a number of years, the Department has also established the following two measures that will provide data in a shorter timeframe—

(1) *Short-Term Performance Measure 1: Persistence.* The percentage of program participants, who were not scheduled to graduate in the previous reporting period, and persisted in the postsecondary program in the current reporting period; and

(2) *Short-Term Performance Measure 2: Employment Retention.* The percentage of beginning teachers who are retained in teaching in the partner high-need LEA or high-need ECE program one year after being hired by the LEA or high-need ECE program.

Note: If funded, you will be asked to collect and report data on these measures in your project's annual performance report (EDGAR, 34 CFR 75.590).

Applicants are also advised to consider these measures in conceptualizing the design, implementation, and evaluation of their proposed projects because of their importance in the application review process. Collection of data on these measures should be a part of the evaluation plan, along with measures of progress on goals and objectives that are specific to your project.

All grantees will be expected to submit an annual performance report documenting their success in addressing these performance measures.

VII. Agency Contact

For Further Information Contact: Teacher Quality Partnership Grants Program, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4W320, Washington, DC 20202. *Telephone:* (202) 260–0563 or by *e-mail: TQPartnership@ed.gov.*

If you use a TDD, call the Federal Relay Service, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or computer diskette) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to this Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: May 20, 2009.

James H. Shelton, III,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. E9–12180 Filed 5–26–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2079–063]

Placer County Water Agency; Notice Dismissing Pleading

May 19, 2009.

On March 26, 2009, the Commission issued Placer County Water Agency, licensee for the Middle Fork Hydroelectric Project No. 2079, a Statement of Annual Charges for U.S. Lands for fiscal year (FY) 2009. On April 26, 2009, the licensee filed a request for rehearing of the FY 2009 annual charge bill and on May 6, 2009, the licensee filed a timely appeal of its FY 2009 annual charge bill, which is still pending.

Pursuant to section 11.20 of the Commission's regulations,[1] if the licensee believes its annual charges bill is incorrect, the licensee may seek an appeal of its bill with the Chief Financial Officer within 45 days after the bill's rendition. Subsequently, the licensee may seek rehearing within 30 days after the Chief Financial Officer's decision on the appeal. As noted above, the licensee's appeal for its FY 2009 annual charge bill is still pending. Therefore, the licensee's request for rehearing is dismissed as premature.

This notice constitutes final agency action. Request for rehearing of this dismissal notice must be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713 (2008).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12213 Filed 5–26–09; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 11.20 (2008).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. QF88–110–006, EL09–54–000]

Ripon Cogeneration, LLC; Notice of Filing

May 19, 2009.

Take notice that on May 12, 2009, Ripon Cogeneration, LLC filed a petition for limited waiver of the operating and efficiency standards for a topping-cycle qualifying cogeneration facility located in Ripon, San Joaquin County, California for years 2009 and 2010, pursuant to subsections 209.205(c) and 209.205(a) of the Commission's Regulations, 18 CFR 292.205(a) and 18 CFR 29.205(a).

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. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 11, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12211 Filed 5–26–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1410–000; EL05–148–000; ER09–412–000]

PJM Interconnection L.L.C.; Notice of Filings

May 19, 2009.

On March 26, 2009, the Commission issued an order accepting new tariff provisions relating to PJM Interconnection, L.L.C. (PJM's) Reliability Pricing Model (RPM) capacity market, including changes to the procedures governing Incremental Auctions that became effective March 27, 2009.[1] One such revision was to the table of default Avoidable Cost Rate (ACR) values for the Base Residual Auction and three subsequent Incremental Auctions that PJM administers for each Delivery Year. Capacity suppliers who fail the market power test may use these ACR values as default bids when they offer capacity into the Incremental Auctions.

On April 29, 2009, the PJM Market Monitor filed a letter to the Commission stating that, due to an oversight on its part, it believes the ACR values contained in those provisions are higher than appropriate for the upcoming Incremental Auctions in June 2009 and January 2010. The Market Monitor is concerned that use of these ACR values may lead to non-competitive market outcomes in the first Incremental Auction (June 1–5, 2009) for Delivery

[1] PJM Interconnection, L.L.C., 126 FERC ¶ 61,275 (2009).

Year 2011/2012 and the third Incremental Auction (January 4–8, 2010) for Delivery Year 2010/2011 and asks the Commission to take action as necessary to correct this condition, if it agrees with the Market Monitor's views regarding non-competitive market outcomes.

PJM filed a responsive letter on April 29, 2009, containing correspondence between PJM and the Market Monitor. In this correspondence, PJM stated that, in its view, an expedited tariff change is not necessary, and that it believes that the prices produced by use of the ACR values accepted in the March 26 Order will lead to rates that are within the range of reasonable variation. PJM also stated that the RPM market design does not anticipate the default ACR values changing for each Delivery Year, and recommends that rather than seeking a tariff change on an emergency basis, PJM's stakeholders should consider this issue and, if they so choose, present this issue to the Commission in an orderly fashion. Therefore, while indicating that ACR changes are not feasible or advisable for the June 2009 Incremental Auction, PJM commits to add the topic of default ACR values to the agenda for the Capacity Markets Evolution Committee as an item to be discussed and resolved by stakeholders by September 1, 2009.

The Commission encourages electronic submission 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 comments 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: June 3, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12214 Filed 5–26–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12679–002]

ORPC Alaska, LLC; Notice of Technical Meeting To Discuss Information and Monitoring Needs for a License Application for a Pilot Project

May 19, 2009.

a. *Type of Application:* Draft License Application for Pilot Project.

b. *Project No.:* 12679–002.

c. *Applicant:* ORPC Alaska, LLC.

d. *Name of Project:* Cook Inlet Tidal Energy Pilot Project.

e. *Location:* The project would be located in upper Cook Inlet off the north shore of Fire Island in the boroughs of Anchorage and Matanuska-Susitna, Alaska. Three proposed alternatives for transmission line alignment would occupy varying amounts of federal lands on Fire Island administered by the U.S. Coast Guard and Federal Aviation Administration.

f. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

g. *Applicant Contact:* ORPC Alaska, LLC, 151 Martine Street, Suite 102–5C, Fall River, MA 02723; (813) 417–6660.

h. *FERC Contact:* Matt Cutlip, phone at (503) 552–2762; e-mail at *matt.cutlip@ferc.gov.*

i. *Project Description:* The proposed Cook Inlet Tidal Energy Pilot Project would be implemented in two phases. Phase 1 would occur in year 1 of the license and would consist of deployment of one OCGen module (module), containing 4 turbine-generator units with a combined capacity of 1 megawatt (MW). Phase 2 would occur in year 2 of the license and would consist of deployment of four additional modules each with a capacity of 1 MW, for a total capacity of 5 MW. The project would also consist of: (1) Underwater transmission cables from the modules to a shore station on Fire Island; (2) a transmission line connecting the shore station to an interconnection point on Fire Island; and (3) appurtenant facilities.

j. *Licensing Process:* On March 31, 2009, ORPC Alaska, LLC, (ORPC Alaska) filed a Notice of Intent and request for waivers of certain regulations of the Federal Energy Regulatory Commission's (Commission) Integrated Licensing Process to expedite processing of a license application for the Cook Inlet Tidal Energy Pilot Project. ORPC Alaska expects to file a license application for a pilot project with the Commission by March 31, 2010.

The purpose of this notice is to inform you of the opportunity to participate in the upcoming technical meeting that ORPC Alaska and the Commission staff will hold to discuss information and monitoring needs for the license application. All interested individuals, organizations, and agencies are invited to attend the meeting. The time and location of the meeting is as follows:

Meeting Schedule and Location

Monday, June 15, 2009, 1 p.m. (local time), Homewood Suites by Hilton, 101 West 48th Ave., Anchorage, AK 99503.

To help focus discussions, Commission staff encourages participants to review ORPC Alaska's Notice of Intent and draft license application and monitoring plans filed with the Commission on March 31, 2009. These materials are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number P–12679 to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Meeting Objectives

At the technical meeting, Commission staff will focus the discussion on the information gaps that need to be addressed to ensure that sufficient information exists for the Commission to make a determination on whether the proposed project meets the criteria for a pilot project and for processing a license application for a pilot project once it is filed with the Commission.

Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–12212 Filed 5–26–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2009–0319, FRL–8909–8]

Agency Information Collection Activities; Proposed Collection; Comment Request; Part B Permit Application, Permit Modifications, and Special Permits, EPA ICR Number 1573.12, OMB Control Number 2050–0009

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 27, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2009–0319, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. 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–RCRA–2009–0319. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at 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 www.regulations.gov or e-mail. The 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 www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Toshia King, Office of Resource Conservation and Recovery, mailcode 5303P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–7033; fax number: 703–308–8617; e-mail address: *king.toshia@epa.gov.*

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2009–0319, which is available for online viewing at www.regulations.gov, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) 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;

(ii) 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;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are business or other for-profit; as well as State, Local, or Tribal governments.

Title: Part B Permit Application, Permit Modifications, and Special Permits.

ICR numbers: EPA ICR No. 1573.12, OMB Control No. 2050–0009.

ICR status: This ICR is currently scheduled to expire on November 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Section 3005 of Subtitle C of RCRA requires treatment, storage or disposal facilities (TSDFs) to obtain a permit. To obtain the permit, the TSDFs must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes; the design capacity of such processes; and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data. In the event that permit modifications are proposed by the applicant or EPA, modifications must conform to the requirements under Sections 3004 and 3005.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 262 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 109.

Frequency of response: On occasion.

Estimated total average number of responses for each respondent: 1.3.

Estimated total annual burden hours: 32,477 hours.

Estimated total annual costs: $7,517,000. This includes an estimated burden cost of $1,814,000 for labor and an estimated cost of $5,703,000 for capital investment or maintenance and operational costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: May 15, 2009.

Matt Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9–12285 Filed 5–26–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2008–0560; FRL–8418–2]

Ethoprop; Notice of Receipt of Request to Voluntarily Amend a Pesticide Registration to Terminate a Use

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of a request by the registrant Bayer CropScience to voluntarily amend a product registration to terminate use of ethoprop in or on pineapple. EPA intends to grant this request at the close of the comment period for this announcement unless the Agency receives substantive comments within the comment period that would merit its further review of the request, or unless the registrant withdraws their request within this period. Upon acceptance of this request, any sale, distribution, or use of products listed in this notice will be permitted only if such sale, distribution, or use is consistent with the terms as described in the final order.

DATES: Comments must be received on or before June 26, 2009.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2008–0560, by one of the following methods:

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

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

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2008–0560. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT:

Monica Wait, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 347–8019; fax number: (703) 308–7070; e-mail address: *wait.monica@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI*. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments*. When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background on the Receipt of Request to Amend Registration to Delete a Use

This notice announces receipt by EPA of a request from registrant Bayer CropScience to amend EPA Registration Number 264-599, Ethoprop Technical, to terminate a use. In a letter dated April 23, 2009, Bayer CropScience requested EPA to amend the Ethoprop Technical pesticide product to terminate use in or on pineapple. There are no active ethoprop end-use products registered for this use. Special Local Need registration PR920002, the last remaining registration for use of ethoprop on pineapple, was voluntarily cancelled by the registrant, effective March 11, 2009. PR920002, for use in Puerto Rico only, was linked to a Section 3 product that had also been voluntarily cancelled. Since none of the three active ethoprop end-use products are registered for use in or on pineapple, the Agency does not anticipate opposition to terminating this use on the Ethoprop Technical product label.

III. What Action is the Agency Taking?

This notice announces receipt by EPA of a request from Bayer CropScience to amend an ethoprop product registration to terminate a use. The affected product and the registrant making the request are identified in Tables 1 and 2 of this unit.

Under section 6(f)(1)(A) of FIFRA, registrants may request, at any time, that their pesticide registrations be canceled or amended to terminate one or more pesticide uses. Section 6(f)(1)(B) of FIFRA requires that before acting on a request for voluntary cancellation, EPA must provide a 30–day public comment period on the request for voluntary cancellation or use termination. In addition, section 6(f)(1)(C) of FIFRA requires that EPA provide a 180–day comment period on a request for voluntary cancellation or termination of any minor agricultural use before granting the request, unless:

1. The registrants request a waiver of the comment period, or

2. The Administrator determines that continued use of the pesticide would pose an unreasonable adverse effect on the environment.

The ethoprop registrant has requested that EPA waive the 180–day comment period. EPA will provide a 30–day comment period on the proposed request.

Unless a request is withdrawn by the registrant within 30 days of publication of this notice, or if the Agency determines that there are substantive comments that warrant further review of this request, an order will be issued amending the affected registration.

TABLE 1.—ETHOPROP PRODUCT REGISTRATION WITH PENDING REQUEST FOR AMENDMENT

Registration Number	Product Name	Use Being Terminated
264-599	Ethoprop Technical	Pineapple

Table 2 of this unit includes the name and address of record for the registrant of the product listed in Table 1 of this unit.

TABLE 2.—REGISTRANT REQUESTING VOLUNTARY AMENDMENT

EPA Company Number	Company Name and Address
264	Bayer CropScience 2 T.W. Alexander Drive Research Triangle Park, NC 27709

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

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the Administrator may approve such a request.

V. Procedures for Withdrawal of Request and Considerations for Reregistration of Ethoprop

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to the person listed under **FOR FURTHER INFORMATION CONTACT**, postmarked before June 26, 2009. This written withdrawal of the request for cancellation will apply only to the applicable FIFRA section 6(f)(1) request listed in this notice. If the products has been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action.

If the request for voluntary use termination is granted as discussed in this unit, the Agency intends to issue a cancellation order that will allow persons other than the registrant to continue to sell and/or use existing stocks of canceled products until such stocks are exhausted, provided that such use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled product. The order will specifically prohibit any use of existing stocks that is not consistent with such previously approved labeling. If, as the Agency currently intends, the final cancellation order contains the existing stocks provision just described, the order will be sent only to the affected registrants of the canceled products. If the Agency determines that the final cancellation order should contain existing stocks provisions different than the ones just described, the Agency will publish the cancellation order in the **Federal Register**.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: May 19, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–12287 Filed 5–26–09; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 19, 2009.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency 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 that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 27, 2009. 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, via fax at 202–395–5167 or via Internet at *Nicholas_A._Fraser @omb.eop.gov* and to *Judith-B.Herman@fcc.gov*, Federal Communications Commission, or an e-mail to *PRA@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information, contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0725.

Title: Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation and Maintenance) by Bell Operating Companies (BOCs).

Form Number(s): N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4 respondents; 16 responses.

Estimated Time per Response: 50 hours.

Obligation to Respond: Required to obtain or retain benefits.

Frequency of Response: Quarterly reporting requirement.

Total Annual Burden: 800 hours.

Annual Cost Burden: No cost.

Privacy Act Impact Assessment: No impact.

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR section 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted to the Office of Management and Budget (OMB) after this 60-day comment period as an extension (no change in requirements) in order to obtain the full three year clearance from them. There is no change to the estimated number of respondents/responses and/or burden hours.

This information collection contains quarterly filing of nondiscrimination reports on quality of service, installation and maintenance by Bell Operating Companies (BOCs). BOCs must submit nondiscrimination reports with regard to payphones to prevent BOCs from discriminating in favor of their own payphones. The reports allow the

Commission to determine how the BOCs will provide competing payphone providers with equal access to all the basic underlying network services that are provided to its own payphones.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–12308 Filed 5–26–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act; Notice of Meetings

TIME AND DATE: 10 a.m., Wednesday, June 10, 2009.

PLACE: The Richard V. Backley Hearing Room, 9th Floor, 601 New Jersey Avenue, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following in open session: *Secretary of Labor* v. *IO Coal Company, Inc.,* Docket No. WEVA 2007–293. (Issues include whether the Administrative Law Judge properly concluded that the violation of the mine's roof control plan did not constitute an unwarrantable failure.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 434–9950/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. E9–12370 Filed 5–22–09; 11:15 am]

BILLING CODE 6735–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The Federal Financial Institutions Examination Council (FFIEC), of which the agencies are members, has approved the agencies' publication for public comment of a proposal to extend, without revision, the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019), which is a currently approved information collection. At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the FFIEC should modify the reports. The Board will then submit the report to OMB for review and approval.

DATES: Comments must be submitted on or before July 27, 2009.

ADDRESSES: Interested parties are invited to submit written comments to the agency listed below. All comments, which should refer to the OMB control number, will be shared among the agencies.

You may submit comments, identified by FFIEC 019 (7100–0213), by any of the following methods:

- *Agency Web Site: http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: regs.comments@federalreserve.gov.* Include the OMB control number in the subject line of the message.
- *Fax:* 202–452–3819 or 202–452–3102.
- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm* as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503 or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collection may be requested from Cynthia Ayouch, Federal Reserve Board Acting Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

SUPPLEMENTARY INFORMATION:

Proposal to extend for three years, without revision, the following currently approved collection of information:

Report Title: Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

Form Number: FFIEC 019.

OMB Number: 7100–0213.

Frequency of Response: Quarterly.

Affected Public: U.S. branches and agencies of foreign banks.

Estimated Number of Respondents: 161.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 6,440 hours.

General Description of Reports

This information collection is mandatory: 12 U.S.C. 3906 for all agencies; 12 U.S.C. 3105 and 3108 for the Board; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the FDIC; and the National Bank Act (12 U.S.C. 161) for the OCC. This information collection is given confidential treatment under the Freedom of Information Act (5 U.S.C. 552(b)(8)).

Abstract

All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form or instructions.

Request for Comment

Comments are invited on:

a. Whether the information collection is necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimate and ways to minimize 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 request.

Board of Governors of the Federal Reserve System, May 21, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12249 Filed 5–26–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 2009.

Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hantz Holdings, Inc., Southfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Davison State Bank, Davison, Michigan.

In connection with this application, Applicant also has applied to acquire Tranex Financial, Inc., Southfield, Michigan, and thereby engage in making and servicing loans, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E9–12277 Filed 5–26–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 22, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. First America Holdings Corporation, Osprey, Florida; to acquire 100 percent of the voting shares of MRCB Holdings, Inc., Palmetto, Florida, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 21, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12276 Filed 5–26–09; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review Meeting of the NTP Board of Scientific Counselors

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health.

ACTION: Meeting announcement and request for comments.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a meeting of the NTP Board of Scientific Counselors (BSC). The BSC is a federally chartered, external advisory group composed of scientists from the public and private sectors that provides primary scientific oversight to the NTP Director and evaluates the scientific merit of the NTP's intramural and collaborative programs.

DATES: The BSC meeting will be held on July 23–24, 2009. The deadline for submission of written comments is July 9, 2009, and for pre-registration to attend the meeting, including registering

to present oral comments, is July 16, 2009. Persons needing interpreting services in order to attend should contact 301–402–8180 (voice) or 301–435–1908 (TTY). For other accommodations while on the NIEHS campus, contact 919–541–2475 or e-mail *niehsoeeo@niehs.nih.gov*. Requests should be made at least 7 days in advance of the event.

ADDRESSES: The BSC meeting will be held in the Rodbell Auditorium, Rall Building, at the NIEHS, 111 T.W. Alexander Drive, Research Triangle Park, NC 27709. Public comments on all agenda topics and any other correspondence should be submitted to Dr. Barbara Shane, Executive Secretary for the BSC, NTP Office of Liaison, Policy and Review, NIEHS, P.O. Box 12233, MD K2–03, Research Triangle Park, NC 27709; *telephone:* 919–541–4253; *fax:* 919–541–0295; or *e-mail: shane@niehs.nih.gov. Courier address:* NIEHS, 530 Davis Drive, Room K 2138, Research Triangle Park, NC 27713.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Shane (*telephone:* 919–541–4253 or *e-mail: shane@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Preliminary Agenda Topics and Availability of Meeting Materials

- Update of NTP Activities.
- Report of the Technical Reports Review Subcommittee Meeting held February 25, 2009.
- NTP Testing Program: Nominations and Proposed Research Projects on alkylanilines, *p*-chlorobenzotrifluoride, deoxynivalenol, Dong quai, indium tin oxide, and tris(4-chlorophenyl)methane and tris(4-chlorophenyl)methanol.
- Contract Concept Review: Investigative ADME Studies of Toxicants in NTP Animal Model Systems.
- Contract Concept Review: Toxicology and Carcinogenicity Studies.
- Contract Concept Review: Report on Carcinogens Support Contract.
- Interagency Agreements with Food and Drug Administration/National Center for Toxicological Research and Centers for Disease Control and Prevention/National Institute for Occupational Safety and Health.

The preliminary agenda, roster of BSC members, draft NTP research concepts, public comments, and any additional information, when available, will be posted on the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) or may be requested in hardcopy from the Executive Secretary for the BSC (see **ADDRESSES** above). Any updates to the agenda will also be posted to this site. Following the meeting, summary minutes will be prepared and made available on the NTP meeting Web site.

NTP Testing Program: Nominations and Proposed Research Projects

The NTP actively seeks to identify and select for study chemicals and other substances for which sufficient information is not available to adequately evaluate potential human health hazards. The NTP accomplishes this goal through a formal, open nomination and selection process. Substances considered appropriate for study generally fall into two broad, yet overlapping categories: (1) Substances judged to have high concern as possible public health hazards based on the extent of human exposure and/or suspicion of toxicity and (2) substances for which toxicological data gaps exist and additional studies would aid in assessing potential human health risks, *e.g.,* by facilitating cross-species extrapolation or evaluating dose-response relationships. Nominations are subject to a multi-step, formal process of review before selections for testing are made and toxicological studies are designed and implemented. The nomination review and selection process is accomplished through the participation of representatives from the NIEHS, other federal agencies represented on the Interagency Committee for Chemical Evaluation and Coordination (ICCEC), the BSC, the NTP Executive Committee—the NTP federal interagency policy body, and the public. The nomination review and selection process is described in further detail on the NTP Web site (*http://ntp.niehs.nih.gov/,* select ''Nominations to the Testing Program'').

Table 1 lists new nominations to be reviewed at the BSC meeting. Background documents for each nomination are available on the NTP Web site *http://ntp.niehs.nih.gov/go/nom.* The NTP invites interested parties to submit written comments, provide supplementary information, or present oral comments at the BSC meeting on the nominated substances and preliminary study recommendations (*see* ''Request for Comments'' below). The NTP welcomes toxicology study information from completed, ongoing, or anticipated studies, as well as information on current U.S. production levels, use or consumption patterns, human exposure, environmental occurrence, or public health concerns for any of the nominated substances. The NTP is interested in identifying appropriate animal and non-animal experimental models for mechanistic-based research, including genetically modified rodents and high-throughput *in vitro* test methods, and as such, solicits comments regarding the use of specific *in vivo* and *in vitro* experimental approaches to address questions relevant to the nominated substances and issues under consideration. Although the deadline for submission of written comments to be considered at the BSC meeting is July 9, 2009 (*see* ''Request for Comments'' below), the NTP welcomes comments or additional information on these study nominations at any time.

TABLE 1—TESTING RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES

Substance [CAS No.]	Nomination source	Nomination rationale	Preliminary study recommendations
Alkylanilines 2–Ethylaniline [578–54–1] 3–Ethylaniline [587–02–0] 3,5–Dimethylaniline [108–69–0]	National Institute of Environmental Health Sciences[1].	Potential for human exposure from a variety of industrial and ambient sources; suspicion of toxicity based on chemical structure; insufficient data to characterize toxicity of this aniline subclass.	Initial toxicological characterization.
p-Chlorobenzotrifluoride [98–56–6]	Kowa American Corp.	High production volume; increasing industrial and potential consumer use; lack of workplace exposure standards; lack of chronic toxicity data.	Comprehensive toxicological characterization including developmental and reproductive toxicity and chronic toxicity/carcinogenicity studies.

TABLE 1—TESTING RECOMMENDATIONS FOR SUBSTANCES NOMINATED TO THE NTP FOR TOXICOLOGICAL STUDIES—Continued

Substance [CAS No.]	Nomination source	Nomination rationale	Preliminary study recommendations
Deoxynivalenol [51481–10–8]	NIEHS	Widespread environmental occurrence and potential for human exposure through consumption of contaminated foods; demonstrated toxicological activity; lack of definitive carcinogenicity and reproductive toxicity studies.	Comprehensive toxicological characterization including reproductive toxicity and chronic toxicity/carcinogenicity studies.
Dong quai (*Angelica sinensis* root [308068–61–3] and extract [299184–76–2]).	Private Individual	Widespread use as a dietary supplement; suspicion of toxicity based on estrogenic activity and chemical structure; lack of adequate toxicity data.	Comprehensive toxicological characterization including phototoxicity studies.
Indium tin oxide [50926–11–9]	NIEHS	Increasing production and use; documented pulmonary effects in exposed workers; suspicion of toxicity based on chemical structure; lack of adequate toxicity data.	Comprehensive toxicological characterization.
Tris(4-chlorophenyl)methane [27575–78–6] and Tris(4-chlorophenyl)methanol [3010–80–8].	NIEHS	Widespread occurrence and persistence in the environment; suspicion of toxicity based on anti-androgenic activity; lack of adequate toxicity data.	Initial toxicological characterization.

[1] National Institute of Environmental Health Sciences (NIEHS)

[2] The terms ''initial'' and ''comprehensive toxicological characterization'' in this table refer to the approximate scope of a research program to address toxicological data needs. The types of toxicological studies that would be considered by NTP staff during the conceptualization and design of a research program are:

- Initial toxicological characterization: biomolecular screening, *in vitro* mechanistic, *in vitro* and *in vivo* genotoxicity, absorption, disposition, metabolism, and elimination, and short-term repeat dose (2–4 weeks) *in vivo* studies.
- Comprehensive toxicological characterization: all of the aforementioned plus subchronic toxicity (13–26 weeks), chronic toxicity (1–2 years), carcinogenicity in conventional or genetically modified rodent models, organ systems toxicity (immunotoxicity, reproductive and developmental toxicity, neurotoxicity), *in vivo* mechanistic, toxicokinetics, and other special studies as appropriate (*e.g.,* chemistry, toxicogenomics, phototoxicity).

To facilitate review of proposed research projects by the BSC and the public, NTP staff developed a draft research concept document for each nomination recommended for study. A research concept is a brief document outlining the nomination or study rationale, and the significance, study approach, and expected outcome of a proposed research program tailored for each nomination. The purpose of these research concepts is to outline the general elements of a program of study that would address the specific issues that prompted the nomination, but also encompass studies that may address larger public health issues or topics in toxicology that could be addressed appropriately through studies on the nominated substance(s). Draft research concepts for the new nominations listed in Table 1 will be available on the BSC meeting page (*http://ntp.niehs.nih.gov/go/165*) by June 8, 2009.

Attendance and Registration

The meeting is scheduled for July 23–24, 2009, beginning at 8:30 a.m. on each day and continuing to 5 p.m. on July 23 and on July 24 until adjournment. The meeting is open to the public with attendance limited only by the space available. Individuals who plan to attend are encouraged to register online at the BSC meeting Web site (*http://ntp.niehs.nih.gov/go/165*) by July 16, 2009, to facilitate planning for the meeting. The NTP is making plans to videocast the meeting through the Internet at *http://www.niehs.nih.gov/news/video/live.*

Request for Comments

Written comments submitted in response to this notice should be received by July 9, 2009. Comments will be posted on the BSC meeting Web site and persons submitting them will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting written comments should include their name, affiliation (if applicable), phone, e-mail, and sponsoring organization (if any) with the document.

Time will be allotted during the meeting for the public to present oral comments to the BSC on the agenda topics. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes at the discretion of the BSC chair. Persons wishing to present oral comments are encouraged to pre-register on the NTP meeting Web site by July 16. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Persons registering to make oral comments are asked, if possible, to send a copy of their statement to the Executive Secretary for the BSC (*see* **ADDRESSES** above) by July 16, 2009. Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 40 copies of the statement for distribution to the BSC and NIEHS/NTP staff and to supplement the record.

Background Information on the NTP Board of Scientific Counselors

The BSC is a technical advisory body comprised of scientists from the public and private sectors that provides primary scientific oversight to the overall program and its centers.

Specifically, the BSC advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purpose of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology, neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. Members serve overlapping terms of up to four years. BSC meetings are held annually or biannually.

Dated: May 15, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9–12204 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; REDS–II Donor Iron Status Evaluation (RISE) Study

Summary: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 9, 2009, pages 10057–10058 and allowed 60-days for public comment. No comments were received in response to this notice. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a current valid OMB control number.

Proposed Collection

Title: REDS–II Donor Iron Status Evaluation (RISE) Study. *Type of Information Collection Request:* Revision of a currently approved collection. OMB control #0925–0581. *Expiration Date:* 05/31/2009. *Need and Use of Information Collection:* Although the overall health significance of iron depletion in blood donors is uncertain, iron depletion leading to iron deficient erythropoiesis and lowered hemoglobin levels results in donor deferral and, occasionally, in mild iron deficiency anemia. Hemoglobin deferrals represent more than half of all donor deferral, deferring 16% of women. The RISE Study is a longitudinal study of iron status in two cohorts of blood donors: a first time/reactivated donor cohort in which baseline iron and hemoglobin status can be assessed without the influence of previous donations, and a frequent donor cohort, where the cumulative effect of additional frequent blood donations can be assessed. Each cohort's donors will donate blood and provide evaluation samples during the study period.

The primary goal of the study is to evaluate the effects of blood donation intensity on iron and hemoglobin status and assess how these are modified as a function of baseline iron/hemoglobin measures, demographic factors, and reproductive and behavioral factors. Hemoglobin levels, a panel of iron protein, red cell and reticulocyte indices will be measured at baseline and at a final follow-up visit 15–24 months after the baseline visit. A DNA sample will be obtained once at the baseline visit to assess three key iron protein polymorphisms. Donors will also complete a self-administered survey assessing past blood donation, smoking history, use of vitamin/mineral supplements, iron supplements, aspirin, frequency of heme rich food intake, and, for females, menstrual status and pregnancy history at these two time points. This study aims to identify the optimal laboratory measures that would predict the development of iron depletion, hemoglobin deferral, and/or iron deficient hemoglobin deferral in active whole blood and double red cell donors at subsequent blood donations. The data collected will help evaluate hemoglobin distributions in the blood donor population (eligible and deferred donors) and compare them with NHANES data. Other secondary objectives include elucidating key genetic influences on hemoglobin levels and iron status in a donor population as a function of donation history; and establishing a serum and DNA archive to evaluate the potential utility of future iron studies and genetic polymorphisms.

This study will develop better predictive models for iron depletion and hemoglobin deferral (with or without iron deficiency) in blood donors; allow for the development of improved donor screening strategies and open the possibility for customized donation frequency guidelines for individuals or classes of donors; provide important baseline information for the design of targeted iron supplementation strategies in blood donors, and improved counseling messages to blood donors regarding diet or supplements; and by elucidating the effect of genetic iron protein polymorphisms on the development of iron depletion, enhance the understanding of the role of these proteins in states of iron stress, using frequent blood donation as a model.

This request for modification is to add eleven questions to the RISE study final visit questionnaire that will include questions about Restless Leg Syndrome (RLS) and pica, two disorders associated with iron deficiency. RLS is a neurologic movement disorder in which patients complain of crawling, aching or indescribable feelings in their legs or just have the need to move. Pica is an eating disorder defined as compulsive ingestion of non-food substances. Blood donation results in the removal of 200–250 mg of iron from the donor. It is well established that repeated blood donation can produce iron deficiency, yet the prevalence of RLS and pica among blood donors is unknown. The REDS–II RISE study subjects are an ideal study population for the investigation of RLS and pica in blood donors. About 2,400 subjects with variable donation intensity (*e.g.* frequency with which a person donates blood) are currently enrolled in the RISE Study. The iron status of all of these subjects is well characterized, including measurement of plasma ferritin and soluble transferrin receptor along with hemoglobin/hematocrit. These laboratory values allow each subject to be defined as 1) iron replete, 2) iron deficient without anemia or 3) iron deficiency anemia. The responses to these questions will be correlated with the laboratory test values to determine the relationship between blood donation and the development of RLS and pica and will establish its prevalence in these populations.

Frequency of Response: Twice. *Affected Public:* Individuals. *Type of Respondents:* Adult blood donors. The annual reporting burden is as follows: *Estimated Number of Respondents:* Baseline visit: 2,340, Follow up visit: 1,530; *Estimated Number of Responses per Respondent:* 1; *Average Burden of Hours per Response:* Baseline Visit: 0.37, Follow up Visit: 0.25; and *Estimated Total Annual Burden Hours Requested:* Baseline visit: 866, Follow up Visit: 383. The annualized cost to respondents is estimated at: Baseline

Visit: $15,588, Follow up Visit: $6,894 (based on $18 per hour). There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Blood donors at Baseline Visit	2,340	1	0.37	866
Blood donors at Follow-up Visit	1,530	1	0.25	383
Total				1,249

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used; (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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. George Nemo, Project Officer, NHLBI, Two Rockledge Center, Suite 361, 6700 Rockledge Drive, Bethesda, MD 20892, or call non-toll free number 301–435–0075, or e-mail your request, including your address to *nemog@nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received *within 30 days* of the date of this publication.

Dated: May 15, 2009.

George Nemo,

Project Officer, NHLBI.

[FR Doc. E9–12210 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–D–0253]

Draft Guidance for Industry on Presenting Risk Information in Prescription Drug and Medical Device Promotion; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Presenting Risk Information in Prescription Drug and Medical Device Promotion.'' This guidance responds to stakeholder requests for specific guidance on how FDA evaluates prescription drug and device promotional pieces to determine whether they adequately present risk information. The guidance describes and discusses the factors FDA considers when evaluating prescription drug advertisements (ads), restricted device ads, and prescription drug and device promotional labeling for their compliance with the Federal Food, Drug, and Cosmetic Act (the act) and relevant regulations. The guidance gives examples to illustrate FDA's thinking on these factors and is intended to help regulated industry gain a better understanding of what they should consider as they develop the content and format of their promotional communications.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the agency considers your comments on this draft guidance before it begins work on the final version of the guidance, submit written or electronic comments on the draft guidance by August 25, 2009. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft 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. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.regulations.gov*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding human prescription drugs*: Kristin Davis, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 Hampshire Ave., Bldg. 22, Silver Spring, MD 20993, 301–796–1200.

Regarding prescription human biological products: Ele Ibarra-Pratt, Center for Biologics Evaluation and Research (HFM–602), Food and Drug Administration, 5515 Security Lane, Rockville, MD 20852–1448, 301–827–3028.

Regarding medical device products: Ann Simoneau, Center for Devices and Radiological Health (HFZ–302), 2094 Gaither Rd., Rockville, MD 20850, 240–276–0100.

Regarding prescription animal drug products: Martine Hartogensis, Center for Veterinary Medicine (HFV–216), 7519 Standish Pl., Rockville, MD 20855, 240–453–6833.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Presenting Risk Information in

Prescription Drug and Medical Device Promotion.'' FDA has responsibility under the act for regulating promotional labeling for prescription drugs and devices and advertising for prescription drugs and restricted devices. As required by the act and regulations, FDA evaluates the promotional materials for these products to determine whether the promotional materials for the product convey an accurate and nonmisleading net impression about the risks and benefits of the product. The draft guidance describes factors FDA considers when evaluating the risk information in promotional materials for these products.

FDA relies on an extensive body of knowledge regarding human cognition in assessing which factors to consider in evaluating promotional materials and making regulatory decisions about the presentation of risk information. In this draft guidance, FDA discusses both the content and format factors that are relevant to its determination of whether promotional materials adequately present risk information and provides numerous examples to illustrate FDA's thinking on these factors. The agency also makes recommendations about how manufacturers can develop the content and format of their promotional materials to comply with the requirements. The recommendations in the guidance apply to both consumer- and professional-directed promotional materials.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on risk information in prescription drug and medical device promotion. 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. 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.

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.regulations.gov*.

Dated: May 13, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–12255 Filed 5–26–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting. The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Health, Behavior, and Context Subcommittee.

Date: June 15–16, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michele C. Hindi-Alexander, PhD, Division Of Scientific Review, National Institutes Of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room, 5B01, Bethesda, MD 20812–7510, (301) 435–8382, *hindialm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12195 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Obstetrics and Maternal-Fetal Biology Subcommittee.

Date: June 15, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Boulevard, Rm 5B01, Rockville, MD 20852, (301) 435–6889, *bhatnagg@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12197 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Mexican Children of Immigrants Program.

Date: June 15, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Room 5B01, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12198 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ARRA Aids Supplement Review Group.

Date: June 11, 2009.

Time: 9 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Enid Light, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6132, MSC 9608, Bethesda, MD 20852–9608. 301–443–0322. *elight@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ARRA P50 Revisions.

Date: June 16, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Francois Boller, MD, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606. 301–443–1513. *bollerf@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ARRA Autism Review #3.

Date: June 19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental Hotel, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Marina Broitman, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608. 301–402–8152. *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ARRA Autism Review #2.

Date: June 19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental Hotel, 1330 Maryland Ave., SW., Washington, DC 20024.

Contact Person: Vinod Charles, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9606, Bethesda, MD 20892–9606. 301–443–1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, ARRA Autism Review #1.

Date: June 19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mandarin Oriental Hotel, 1330 Maryland Avenue, SW., Washington, DC 20024.

Contact Person: Rebecca C. Steiner, PhD, Scientific Review Officer, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6149, MSC 9608, Bethesda, MD 20892–9608. 301–443–4525. *steinerr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12202 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants Program for Cancer Epidemiology.

Date: June 18–19, 2009.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Joyce C. Pegues, BS, BA, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Physical Sciences—Oncology Center.

Date: June 29–30, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott North Conference Center, 5701 Marinelli Road, Rockville, MD 20852.

Contact Person: Kenneth L. Bielat, BS, PhD, Scientific Review Officer, Special Review Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7147, Bethesda, MD 20892–8329, 301496–7576, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Comprehensive Minority Institution/Cancer Center Partnership.

Date: July 16–17, 2009.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Joyce C. Pegues, BS, BA, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7149, Bethesda, MD 20892–8329, 301–594–1286, *peguesj@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Bio-specimen Prep.

Date: July 21, 2009.

Time: 8 a.m. to 11a.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria at Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Marvin L. Salin, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7073, Bethesda, MD 20892–8329, 301–496–0694, *msalin@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12206 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 16–17, 2009.

Time: June 16, 2009, 2 p.m. to 5:30 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as a discussion of Biosafety Considerations for the Cloning of the Risk Group 4 Mononegavirales: Marburg, Nipah and Hendra viruses—in Non-Pathogenic *E. coli.* Please check the meeting agenda at *http://oba.od.nih.gov/rdna.html* for more information.

Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 6, Bethesda, MD 20892.

Time: June 17, 2009, 8:15 a.m. to 3 p.m.

Agenda: The Recombinant DNA Advisory Committee will review and discuss selected human gene transfer protocols as well as related data management activities. Please check the meeting agenda at *http://oba.od.nih.gov/rdna.html* for more information.

Place: National Institutes of Health, Building 31, 31 Center Drive, Floor 6C, Room 6, Bethesda, MD 20892.

Contact Person: Laurie Lewallen, Advisory Committee Coordinator, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 750, Bethesda, MD 20892–7985. 301–496–9838. *lewallla@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's ''Mandatory Information Requirements for Federal Assistance Program Announcements'' (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12208 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel ARRA Grant Review.

Date: June 1, 2009.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN18, 45 Center Drive, Bethesda, MD 20892. (Telephone Conference Call)

Contact Person: Brian R. Pike, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18, Bethesda, MD 20892, 301–594–3907, *pikbr@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards., National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12235 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, May 18, 2009, 8 a.m. to May 18, 2009, 5 p.m., St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036 which was published in the **Federal Register** on May 1, 2009, 74 FR 20326.

The meeting will be held June 18, 2009, 8 a.m. to June 19, 2009, 5 p.m. The meeting location remains the same. The meeting is closed to the public.

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12233 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Biomedical Research and Research Training Review Subcommittee B.

Date: June 17, 2009.

Time: 8 a.m.to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Arthur L. Zachary, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN–18, Bethesda, MD 20892, (301) 594–2886, *zacharya@nigms.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Initial Review Group; Biomedical Research and Research Training Review Subcommittee A.

Date: June 18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Carole H. Latker, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18, Bethesda, MD 20892, (301) 594–2848, *latkerc@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory.

[FR Doc. E9–12231 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Competitive Revision Applications—ARRA Funds.

Date: June 1, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, Room 3AN12, 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Mona R. Trempe, PhD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12, Bethesda, MD 20892. 301–594–3998. *trempemo@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12228 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group. Pediatrics Subcommittee.

Date: June 18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy, 1775 Rockville Pike, Rockville, MD.

Contact Person: Rita Anand, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd Room 5B01, Bethesda, MD 20892. (301) 496–1487. *anandr@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12209 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group. Population Sciences Subcommittee.

Date: June 18–19, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Madison, 1177 15th Street, NW., Washington, DC 20005.

Contact Person: Carla T. Walls, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health, and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892. (301) 435–6898. *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12207 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel. Review of ARRA Revision R01 Applications.

Date: June 15, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, 6701 Democracy Blvd., Room 664, Bethesda, MD 20892. 301–594–4859. *horsforj@mail.nih.gov.*

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel. Review of ARRA Revision R01 Applications.

Date: June 18, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Jonathan Horsford, PhD, Scientific Review Officer, Natl Inst of Dental and Craniofacial Research, National Insitutes of Health, 6701 Democracy Blvd., Room 664, Bethesda, MD 20892. 301–594–4859. *horsforj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12205 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Developmental Biology Subcommittee.

Date: June 15–16, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, (301) 496–1485, *changn@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12203 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health,

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications. and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications., the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: June 10–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *luethkel@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Cardiac Contractility, Hypertrophy, and Failure Study Section.

Date: June 10–11, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Quincy, 1823 L Street, NW., Washington, DC 20036.

Contact Person: Olga A. Tjurmina, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4030B, MSC 7814, Bethesda, MD 20892, (301) 451–1375, *ot3d@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review, Special Emphasis Panel Member Conflicts in Virology

Date: June 10–11, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive Bethesda, MD 20892. (Virtual Meeting)

Contact Person: Rossana Berti, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892. 301–402–6411, *bertiros@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Competitive Revisions-1: DKUS IRG.

Date: June 10, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Chicago O'Hare Airport-Rosemont, 5460 North River Road, Rosemont, IL 60018.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Roadmap HTS Assay Development.

Date: June 11–12, 2009.

Time: 7 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Nikko San Francisco, 222 Mason Street, San Francisco, CA 94102.

Contact Person: James J. Li, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, 301–435–2417, *lijames@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Clinical and Integrative Cardiovascular Sciences Study Section.

Date: June 11–12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Russell T. Dowell, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Emerging Technologies and Training Neurosciences Integrated Review Group; Molecular Neurogenetics Study Section.

Date: June 11–12, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5203, MSC 7812, Bethesda, MD 20892. (301) 435–0902, *leepg@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Chemo/Dietary Prevention Study Section.

Date: June 11–12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington DC/Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20912.

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Clinical Neuroimmunology and Brain Tumors Study Section.

Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Pathobiology of Kidney Disease Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Krystyna E. Rys-Sikora, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4016J, MSC 7814, Bethesda, MD 20892, 301–451–1325, *ryssokok@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Development—2 Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sir Francis Drake Hotel, 450 Powell Street, San Francisco, CA 94102.
Contact Person: Neelakanta Ravindranath, PhD, MVSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892, 301–435–1034, *ravindrn@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Acute Neural Injury and Epilepsy Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846 Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

Name of Committee: Vascular and Hematology Integrated Review Group; Hypertension and Microcirculation Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Ai-Ping Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–435–1777, *zouai@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group; Host Interactions with Bacterial Pathogens Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Neurodegeneration in Disease and Aging.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; ZRG1 IFCN-M (95) S Revisions: Auditory System.
Date: June 11, 2009.
Time: 8 a.m. to 5 p.m.
*Agenda:*To review and evaluate grant applications.
Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.
Contact Person: Lynn E. Luethke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5166, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *luethkel@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Interventions for Chronic Conditions.
Date: June 11–12, 2009..
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting)
Contact Person: Gabriel B. Fosu, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rocklege Drive, Room 3215, MSC 7808, Bethesda, MD 20892, (301) 435–3562, *fosug@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Synthetic and Biological Chemistry A Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
*Agenda:*To review and evaluate grant applications.
Place: The Legacy Hotel 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Mike Radtke, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892, 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Myocardial Ischemia and Metabolism Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.
Contact Person: Joyce C. Gibson, DSC, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, 301–435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Transplantation, Tolerance, and Tumor Immunology Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetics of Health and Disease Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.
Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, 301 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Healthcare Delivery and Methodologies; Health Services Organization and Delivery Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.
Contact Person: Kathy Salaita, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7770, Bethesda, MD 20892, 301–451–8504, *salaitak@csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.
Date: June 11–12, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact: John Burch, PhD, Scientific Review Officer, National Institutes of Health,

Center for Scientific Review, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, 301–435–1019, *burchjb@csr.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Developmental Therapeutics Study Section.

Date: June 11–12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Cell Death in Neurodegeneration Study Section.

Date: June 11–12, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P. Sokolov, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–435–1197, *bsokolov@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Enabling Bioanalytical and Biophysical Technologies Study Section.

Date: June 11–12, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 355 Powell Street, San Francisco, CA 94102.

Contact Person: Vonda K. Smith, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7806, Bethesda, MD 20892, 301–435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Regulation, Learning and Ethology Study Section.

Date: June 11–12, 2009.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *geraldmel@csr.nih.gov.*

Name of Committee: Epidemiology and Population Studies Integrated Review Group; Social Sciences and Population Studies Study Section.

Date: June 11–12, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.

Contact Person: Bob Weller, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Cellular and Molecular Biology of Neurodegeneration Study Section.

Date: June 11–12, 2009.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4183, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group; Genetic Variation and Evolution Study Section.

Date: June 11–12, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 25th Street, Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, 301–435–1038, *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Biological Chemistry Special Emphasis.

Date: June 11, 2009.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: William A. Greenberg, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Software Maintenance and Extension.

Date: June 11–12, 2009.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7849, Bethesda, MD 20892, 301–435–1245, *chackoge@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group; Biobehavioral Mechanisms of Emotion, Stress and Health Study Section.

Date: June 12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 594–3163, *champoum@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Competitive Revisions: Molecular Neurogenetics.

Date: June 12, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Crystal City, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Paek-Gyu Lee, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4201, MSC 7812, Bethesda, MD 20892, (301) 435–1277, *leepg@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; BRLE: Review of Competing Revisions.

Date: June 12, 2009.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Melissa Gerald, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0692, *geraldmel@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Chemo/Dietary Prevention ARRA–CR.

Date: June 12, 2009.

Time: 1 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza Washington, DC-Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Sally A. Mulhern, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–5877, *mulherns@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Cancer Therapeutics ARRA–CR.

Date: June 12, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.

Contact Person: Sharon K. Gubanich, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892, (301) 435–1767, *gubanics@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Molecular and Cellular Processes of Neurodegeneration.
Date: June 12, 2009.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Laurent Taupenot, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *taupenol@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Bacterial and Host Defenses.
Date: June 12, 2009.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Suites, 1111 30th Street, NW., Washington, DC 20007.
Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20814–9692, (301) 435–1149, *elzaataf@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; ARRA Competive Revision Application Review.
Date: June 12, 2009.
Time: 2 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Allerton Hotel Chicago, 701 North Michigan Avenue, Chicago, IL 60611.
Contact Person: Jin Huang, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095G, MSC 7812, Bethesda, MD 20892, 301–435–1230, *jh377p@nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Member Conflicts-Psychosocial Development, Risk, and Prevention.
Date: June 12, 2009.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Karen Lechter, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3128, MSC 7759, Bethesda, MD 20892, 301–496–0726, *lechterk@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; MESH: Review of Competing Revisions.
Date: June 12, 2009.
Time: 5 p.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.
Contact Person: Maribeth Champoux, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, 301–594–3163, *champoum@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Family Planning Service Delivery Improvement Research.
Date: June 12, 2009.
Time: 12 p.m. to 2 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Estina E. Thompson, PhD, MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–496–5749, *thompsone@mail.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Cell Biology Member SEP.
Date: June 12, 2009.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call)
Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov*.

Name of Committee: Center for Scientific Review, Special Emphasis Panel; Competitive Revisions: Clinical Neuroimmunology and Brain Tumors.
Date: June 12, 2009.
Time: 12 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1184, *joshij@csr.nih.gov*.

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Electrical Signaling, Ion Transport, and Arrhythmias Study Section.
Date: June 14–15, 2009.
Time: 7 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.
Contact Person: Rajiv Kumar, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, 301–435–1212, *kumarra@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12244 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Cardiac Development Consortium.
Date: June 16, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.
Contact Person: Tony L. Creazzo, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzot@mail.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Patient Oriented Research (K23, 24, and 25's) Career Enhancement Awards.
Date: June 16–17, 2009.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.
Contact Person: Mark Roltsch, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7192, Bethesda, MD 20892–7924, 301–435–0287, *roltschm@nhlbi.nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Pediatric Translational Consortium Administrative Coordinating Center.
Date: June 16, 2009.
Time: 5 p.m. to 8 p.m.
Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Tony L. Creazzo, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzot@mail.nih.gov.*

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, NHLBI Pediatric Cardiac Genomics Consortium.

Date: June 17, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Tony L. Creazzo, PhD, Scientific Review Officer, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7180, Bethesda, MD 20892–7924, 301–435–0725, *creazzot@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 19, 2009

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12242 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Biotechnology Activities, Office of Science Policy, Office of the Director; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a public teleconference of the National Science Advisory Board for Biosecurity (NSABB).

Under authority 42 U.S.C. 217a, section 222 of the Public Health Service Act, as amended, the Department of Health and Human Services established NSABB to provide advice, guidance and leadership regarding Federal oversight of dual use research, defined as biological research with legitimate scientific purposes that could be misused to pose a biological threat to public health and/or national security.

A publicly accessible teleconference line will be available for the meeting.

Name of Committee: National Science Advisory Board for Biosecurity.

Date: May 27, 2009.

Open: 1 p.m. to 2:30 p.m.

Agenda: Presentations and discussions regarding revisions to the draft NSABB report on Enhancing Personnel Reliability among Individuals with Access to Select Agents and Toxins.

Place: National Institutes of Health, Office of Biotechnology Activities, Suite 750, Bethesda, Maryland 20892. (Telephone Conference Call).

Call-in Information: Toll-Free Number: 1–800–988–9458. Participant Passcode: NSABB.

Contact Person: Ronna Hill, NSABB Program Assistant, 6705 Rockledge Drive, Bethesda, Maryland 20892. (301) 496–9838.

The teleconference meeting agenda, revised draft report and other information about the NSABB will be available at *http://www.biosecurityboard.gov* Please check this Web site for updates.

The teleconference will include opportunity for public comment. In addition, any interested person may file written comments with the committee. All written comments must be received by May 26, 2009 and should be sent via e-mail to *nsabb@od.nih.gov* with ''NSABB Public Comment'' as the subject line or by regular mail to 6705 Rockledge Drive, Suite 750, Bethesda, MD 20892, *Attention:* Ronna Hill. The statement should include the name, address, telephone number and, when applicable, the business or professional affiliation of the interested person.

This notice is being published less than 15 days prior to the meeting due to time restraints placed on Committee deliberations.

Dated: May 18, 2009.

Jennifer Spaeth,

Office of Federal Advisory Committee Policy.

[FR Doc. E9–12275 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 13–14, 2009.

Open: June 13, 2009, 5:30 p.m. to 6 p.m.

Agenda: To review procedures and discuss policy.

Place: Four Points Sheraton, 1201 K Street, NW., Washington, DC 20005.

Closed: June 13, 2009, 6:00 p.m. to 9:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 1201 K Street, NW., Washington, DC 20005.

Closed: June 14, 2009, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, 1201 K Street, NW., Washington, DC 20005.

Contact Person: John F. Connaughton, PhD, Chief, Chartered Committees Section, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7797, *connaughtonj@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Digestive Diseases and Nutrition C Subcommittee.

Date: June 17–18, 2009.

Open: June 17, 2009, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Georgetown Suites, 1000 29th Street NW., Washington, DC 20007.

Closed: June 17, 2009, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street NW., Washington, DC 20007.

Closed: June 18, 2009, 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Suites, 1000 29th Street, NW., Washington, DC 20007.

Contact Person: Dan E. Matsumoto, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 749, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8894, *matsumotod@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group; Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 24–25, 2009.

Open: June 24, 2009, 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policy.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 24, 2009, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 25, 2009, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Barbara A Woynarowska, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 754, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 402–7172, *woynarowskab@niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12274 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene and Drug Delivery Systems Competitive Revisions.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Lombardy, 2019 Pennsylvania Avenue, NW., Washington, DC 20006.

Contact Person: Amy L. Rubinstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Rm 5152 MSC 7844, Bethesda, MD 20892, 301–435–1159. *rubinsteinal@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, SAT Competing Revisions.

Date: June 5, 2009.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Allerton Hotel Chicago, 701 N. Michigan Avenue, Chicago, IL 60611.

Contact Person: Weihua Luo, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170. *luow@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Cancer Etiology Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718. *sizemoren@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group, Cancer Immunopathology and Immunotherapy Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Molecular and Cellular Endocrinology Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jonathan Arias, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, 301–435–2406, *ariasj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Biology Integrated Review Group, Cellular Signaling and Regulatory Systems Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Elena Smirnova, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, 301–435–1236, *smirnove@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Molecular Genetics C Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Francis Drake Hotel, 450 Powell Street at Sutter, San Francisco, CA 94102.

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, 301/435–4511, *whitmarshb@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group, Neurodifferentiation, Plasticity, and Regeneration Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1769 King Street, Alexandria, VA 22314.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Cellular and Molecular Biology of the Kidney Study Section.

Date: June 8, 2009.

Time: 8 a.m. to 8 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Bonnie L. Burgess-Beusse, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *beusseb@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Cellular, Molecular and Integrative Reproduction Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Knecht, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046, *knechtm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 1–Basic Translational Integrated Review Group, Cancer Genetics Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Health Services Research.

Date: June 8, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine N. Bent, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892, (301) 435–0695, *bentkn@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Biology Integrated Review Group, Biology and Diseases of the Posterior Eye Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael H. Chaitin, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5202, MSC 7850, Bethesda, MD 20892, (301) 435–0910, *chaitinm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Microscopic Imaging Study Section.

Date: June 8, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Savoy Suites, 2505 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Brain Injury and Neurovascular Pathologies Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *yakovleva@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroscience and Neurodegeneration Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Seetha Bhagavan, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–1121, *bhagavas@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Tumor Cell Biology Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Angela Y. Ng, PhD, MBA, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, (301) 435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Oncology 1—Basic Translational Integrated Review Group, Molecular Oncogenesis Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Joanna M. Watson, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6208, MSC 7804, Bethesda, MD 20892, (301) 435–1048, *watsonjo@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Hepatobiliary Pathophysiology Study Section.

Date: June 8–9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Rass M. Shayiq, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biobehavioral and Behavioral Processes Integrated Review Group, Child Psychopathology and Developmental Disabilities Study Section.

Date: June 8–9, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.

Date: June 8–9, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Beacon Hotel, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *manospa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ultrasound Imaging: Instrumentation, Innovation and Small Business.

Date: June 8–9, 2009.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209.

Contact Person: Xiang-Ning Li, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1744, *lixiang@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.

Date: June 8–9, 2009.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: George W. Chacko, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4186, MSC 7806, Bethesda, MD 20892, (301) 435–1245, *chackoge@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Injury and Cell Death.

Date: June 8–9, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Suzan Nadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217B, MSC 7846, Bethesda, MD 20892, 301–435–1259, *nadis@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Prokaryotic Cell and Molecular Biology Study Section.

Date: June 9–10, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Carlyle Suites Hotel, 1731 New Hampshire Avenue, NW., Washington, DC 20009.

Contact Person: Diane L. Stassi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, 301–435–2514, *stassid@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Cell Biology Integrated Review Group, Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: June 9–10, 2009.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: Alexandra M. Ainsztein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, 301–451–3848, *ainsztea@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR–09–057: Improving Interventions for Communication Disorders.

Date: June 9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Eugene Carstea, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5199, MSC 7846, Bethesda, MD 20892, (301) 435–0634.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Central Visual Processing Study Section.

Date: June 9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function D Study Section.

Date: June 9–10, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

Contact Person: James W. Mack, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Revision: Center Visual Processing Study Section.

Date: June 9, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Warwick Seattle Hotel, 401 Lenora Street, Seattle, WA 98121.

Contact Person: Judith A. Finkelstein, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5178, MSC 7844, Bethesda, MD 20892, 301–435–1249, *finkelsj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR08–224: System Dynamics Methodologies.

Date: June 9, 2009.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Fungai F. Chanetsa, MPH, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135,

MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Retinopathy Models and Therapy.

Date: June 9, 2009.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Raya Mandler, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Injury and Blood-Brain Barrier.

Date: June 9, 2009.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance M Street Hotel, 1143 New Hampshire Avenue, NW., Washington, DC 20037.

Contact Person: Alexander Yakovlev, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, 301–435–1254, *yakovleva@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Microbial Pathogens.

Date: June 9, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (telephone conference call).

Contact Person: Liangbiao Zheng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, 301–402–5671, *zhengli@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Topics in Cancer Genetics ARRA CR.

Date: June 9, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, 301–451–0132, *zouzhiq@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Carcinogenesis ARRA CR.

Date: June 9, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nywana Sizemore, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6204, MSC 7804, Bethesda, MD 20892, 301–435–1718, *sizemoren@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Developmental Neurobiology.

Date: June 9, 2009.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town Hotel, 1767 King Street, Alexandria, VA 22314.

Contact Person: Joanne T. Fujii, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7850, Bethesda, MD 20892, (301) 435–1178, *fujiij@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.

Date: June 9–10, 2009.

Time: 6 p.m. to 7 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Chicago, O'Hare Airport, 5460 North River Road, Rosemont, IL 60018.

Contact Person: Patricia Greenwel, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2172, MSC 7818, Bethesda, MD 20892, 301–435–1169, *greenwep@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, CPDD: Review of Competing Revisions.

Date: June 9, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Bolger Center, 9600 Newbridge Drive, Potomac, MD 20854.

Contact Person: Jane A. Doussard-Roosevelt, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–4445, *doussarj@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Competitive Revisions: Developmental Brain Disorders.

Date: June 9, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Beacon Hotel and Corporate Quarters, 1615 Rhode Island Avenue, NW., Washington, DC 20036.

Contact Person: Pat Manos, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, 301–435–1785, *manospa@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Tumor Biology—ARRA CR.

Date: June 9, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Angela Y. Ng, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6200, MSC 7804 (For courier delivery, use MD 20817), Bethesda, MD 20892, 301–435–1715, *nga@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Immunotherapy ARRA CR.

Date: June 9, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Denise R. Shaw, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7804, Bethesda, MD 20892, 301–435–0198, *shawdeni@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12272 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 4, 2009, 8 a.m. to June 4, 2009, 5 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 5, 2009, 74 FR 20712–70715.

The starting time of the meeting on June 4, 2009 has been changed to 1:30 p.m. until adjournment. The meeting date and location remain the same. The meeting is closed to the public.

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12264 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Race-Based Social Stress and Health in the MADICS Longitudinal Study, University of Michigan at Ann Arbor.

Date: June 16, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Michele C. Hindi-Alexander, PhD, Division of Scientific Review, National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 1600 Executive Boulevard, Rm. 5B01, Bethesda, MD 20892, (301) 435–8382, *hindialm@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12194 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial Review Group; Function, Integration, and Rehabilitation Sciences Subcommittee.

Date: June 15, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Anne Krey, PhD, Scientific Review Administrator, Division of Scientific Review, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5B01, Bethesda, MD 20892, 301–435–6908. *ak41o@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12193 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. APP.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; Basic and Preclinical Sciences.

Date: June 14–16, 2009.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov*.

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12192 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Complementary and Alternative Medicine Special Emphasis Panel; ARRA Type 3 Basic Science R21 applications.

Date: June 14–16, 2009.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter Kozel, PhD, Scientific Review Officer, NCCAM, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20892–5475, 301–496–8004, *kozelp@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.701, ARRA Related Biomedical Research and Research Support Awards, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12191 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors for Basic Sciences National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Basic Sciences National Cancer Institute.

Date: July 13, 2009.

Time: 9 a.m. to 4:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Executive Secretary, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2205, Bethesda, MD 20892, 301–496–7628, *ff6p@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/bsc/bs/bs.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 19, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12222 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; The NIDDK KUH Fellowship Review.

Date: June 18, 2009.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Kidney Disease Ancillary Studies.

Date: June 24, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call)

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Neuroimaging in Obesity Research.

Date: June 25–26, 2009.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites, 1250 22nd Street NW., Washington, DC 20037.

Contact Person: Michael W. Edwards, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 750, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8886, *edwardsm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Artificial Pancreas SBIR Applications.

Date: July 7, 2009.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Multiethnic Study of Type 2 Diabetes Genes.

Date: July 13, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washingtonian Center Courtyard, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Xiaodu Guo, MD, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health Room 761, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–4719, *guox@extra.niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; CKD Biomarker Discovery and Validation Consortium (U01)

Date: July 13–14, 2009.

Time: 5:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Gaithersburg Washingtonian Center, 204 Boardwalk Place, Gaithersburg, MD 20878.

Contact Person: Atul Sahai, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 759, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–2242, *sahaia@niddk.nih.gov*.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Intestinal Stem Cells.

Date: July 15, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12248 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel; Conference Grants 1.

Date: July 1, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Steven Birken, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., 10th Fl., Bethesda, MD 20892, (301) 435–1078, *birkens@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel; Recovery Act Limited Competition: Extramural Research Facilities Improvement, Program 1 (C06).

Date: July 20–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Barbara J. Nelson, PhD, Scientific Review Officer, Office of Review, National Center for Research Resources, NIH, 6701 Democracy Blvd., Room 1080, 1 Democracy Plaza, Bethesda, MD 20892, (301) 435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333; 93.702, ARRA Related Construction Awards, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12245 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; ZDE1 VH (31) Review of OD–09–058 Competitive Revisions R01 and R21 applications.

Date: June 15, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov*.

Name of Committee: National Institute of Dental and Craniofacial Research Special Emphasis Panel; ZDE1 VH (26) Review of R03 and R21 Applications on Osteonecrosis of the Jaw (ONJ).

Date: June 22, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, 6701 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Victor Henriquez, PhD, Scientific Review Officer, DEA/SRB/NIDCR, 6701 Democracy Blvd., Room 668, Bethesda, MD 20892–4878, 301–451–2405, *henriquv@nidcr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and

Disorders Research, National Institutes of Health, HHS)

Dated: May 18, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12234 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group (NCIPC IRG)

Correction: This notice was published in the **Federal Register** on May 1, 2009, Volume 74, Number 83, Page 20325. The times and place for the aforementioned meeting for the review, discussion, and evaluation of individual research cooperative agreement applications submitted in response to Fiscal Year 2009 Requests for Applications (RFA) related to the following individual research announcement: RFA EH–09–002 ''Program to Expand State Public Health Laboratory Capacity for Newborn Bloodspot Screening (U01)'' has been changed to the following:

Times and Date:

12:30 p.m.–12:45 p.m., July 9, 2009 (Open)
12:45 p.m.–2:30 p.m., July 9, 2009 (Closed)

Place: Teleconference, Toll Free: 888–793–2154, Participant Passcode: 4424802.

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., NCIPC, CDC, 4770 Buford Highway, NE., Mailstop F–62, Atlanta, Georgia 30341. Telephone: (770) 488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 19, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–12325 Filed 5–26–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group (NCIPC IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following teleconference meeting:

Time and Date:

2:30 p.m.–2:45 p.m., July 9, 2009 (Open).
2:45 p.m.–4:30 p.m., July 9, 2009 (Closed).

Place: Teleconference, Toll Free: 888–793–2154, Participant Pass Code: 4424802.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications submitted in response to Fiscal Year 2009 Requests for Applications (RFA) related to the following individual research announcement: RFA EH–09–003 ''Program to Enhance State Public Health Laboratory Capacity for Newborn Bloodspot Screening (U01).''

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Jane Suen, Dr.P.H., M.S., NCIPC, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, Telephone 770–488–4281.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 19, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–12324 Filed 5–26–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Calerie Review.

Date: June 17, 2009.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ramesh Vemuri, PhD, Chief, Scientific Review Branch, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C–212, Bethesda, MD 20892, 301–402–7700, *rv23r@nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Epidemiology of Dementia in an Urban Setting.

Date: June 24, 2009.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C218, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alfonso R. Latoni, PhD, Deputy Chief and Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Room 2C218, Bethesda, MD 20892, 301–402–7702, *latonia@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Calorie Restriction and Effects on IGF.

Date: June 25, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway

Bldg., 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov.*

Name of Committee: National Institute on Aging Special Emphasis Panel; Pepper Centers.

Date: June 29–30, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alicja L Markowska, PhD, DSC, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 15, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–12199 Filed 5–26–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program; Planning Cooperative Agreement

Announcement Type: New.

Funding Announcement Number: HHS–2009–IHS–TSGP–0001.

Catalog of Federal Domestic Assistance Number: 93.444.

Key Dates:

Application Deadline Date: June 22, 2009.

Review Date: July 6–7, 2009.

Anticipated Start Date: August 3, 2009.

I. Funding Opportunity Description

The purpose of the Planning Cooperative Agreement is to provide resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP), as authorized by Public Law 106–260, the Tribal Self-Governance Amendments of 2000, Title V of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (Title V) (25 U.S.C. 458aaa–2(e)). There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet specific criteria (Refer to Section III.1.A., Eligible Applicants in this announcement). The TSGP is designed to promote Self-Determination by enabling Tribes to assume control of Indian Health Service (IHS) programs, services, functions, and activities, or portions thereof (PSFAs), through compacts negotiated with the IHS. The Planning Cooperative Agreement enables a Tribe to gather information on the current types of PSFAs and related funding available at the Service Unit, Area, and Headquarters levels.

This program is described at 93.444 in the Catalog of Federal Domestic Assistance (CFDA).

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2009 is $600,000 for approximately eight Tribes. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: The estimated number of awards to be funded is approximately eight.

Project Period: 12 months.

Award Amount: $75,000 per year.

Programmatic Involvement: Planning Cooperative Agreements entail substantial IHS programmatic involvement to establish a basic understanding of PSFAs and associated funding at the Service Unit, Area, and Headquarters levels.

The IHS roles and responsibilities include:

- Providing a description of PSFAs and associated funding at all levels, including funding formulas and methodologies related to determining Tribal shares.
- Identifying IHS staff who will consult with applicants on methods currently used to manage and deliver health care.
- Providing applicants with statutes, regulations and policies that provide authority for administering IHS programs.

The grantee roles and responsibilities are critical to the success of the TSGP and include:

- Researching and analyzing the complex IHS budget to gain a thorough understanding of funding distribution at all levels and to determine which PSFAs the Tribe may elect to assume.
- Establishing a process by which Tribes can effectively approach the IHS to identify programs and associated funding which could be incorporated into their current programs.
- Determining the Tribe's share of each PSFA and evaluating the current level of health care services being provided to make an informed decision on new program assumption(s).

III. Eligibility Information

1. Eligible Applicants

To be eligible for a Planning Cooperative Agreement under this announcement, an applicant must:

A. Be a Federally-recognized Tribe as defined in 25 U.S.C. 450b(e). However, Alaska Native Villages or Alaska Native Village Corporations are not eligible if they are located within the area served by an Alaska Native regional health entity already participating in the Alaska Tribal Health Compact. Those Tribes not represented by a self-governance Tribal consortium funding agreement within their area may still be considered to participate in the TSGP.

B. Submit a Tribal resolution or other official action from the appropriate governing body authorizing the submission of the Planning Cooperative Agreement application. Tribal Consortia applying for a Tribal Self-Governance Planning Cooperative Agreement shall submit Tribal Council Resolutions from each Tribe in the consortium. Draft resolutions, submitted with the application, are acceptable in lieu of an official signed resolution. However, an official signed Tribal resolution must be received by the Division of Grants Management (DGM), Attn: John Hoffman, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, prior to the evaluation on July 6, 2009. If an official signed resolution is not received by July 6, 2009, the application will be considered incomplete and will be returned without consideration.

* It is highly recommended that the Tribal resolution be sent by a delivery method that includes proof of receipt.

C. Demonstrate, for three fiscal years, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's self-determination contracts or self-governance funding agreements with any Federal agency. Applicants are required to submit annual audit reports for the three fiscal years prior to the year in which the applicant is applying for the planning cooperative agreement. The applicants may scan the documents and attach them to the electronic application. If the applicant determines that the audit reports are too lengthy, the applicants may submit them separately via regular mail by the due date, June 22, 2009. Applicants sending in audits via regular mail must submit two copies of the audits for the three previous fiscal years under separate cover directly to the Division of Grants Management, Attn: John Hoffman, 801 Thompson Avenue, TMP, Suite 360,

Rockville, MD 20852, referencing the Funding Opportunity Number, HHS–2009–IHS–TSGP–0001, as prescribed by Public Law 98–502, the Single Audit Act, as amended (see OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations). If this documentation is not received by June 22, 2009, the application will be considered as incomplete and will be returned to the applicant without further consideration. Applicants must include the grant tracking number assigned to their electronic submission by Grants.gov and the date submitted via Grants.gov in their cover letter transmitting the required audits for the previous three fiscal years.

2. Cost Sharing or Matching

The Tribal Self-Governance Planning Cooperative Agreement announcement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

A. This program is described at 93.444 in the CFDA.

B. If application budget documents exceed the stated dollar amount that is outlined within this announcement, the application will be returned to the applicant without further consideration.

IV. Application and Submission Information

1. Application package and detailed instructions for this announcement may be found through Grants.gov (*http://www.grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding*.

Information regarding this announcement may also be found on the Office of Tribal Self-Governance Web site at: *http://www.ihs.gov/NonMedicalPrograms/SelfGovernance/index.cfm?module=planning_negotiation*.

2. Content and Form of Application Submission:

A. The application must contain the following:

(1) Table of Contents.

(2) Abstract (one page) summarizing the project.

(3) Narrative (no more than seven pages) providing:

(a) Background information on the tribe.

(b) Proposed scope of work, objectives, and activities that provide a description of what will be accomplished including a one-page Time Frame Chart.

(4) Budget narrative and justification.

(5) Tribal Resolution (or official action).

(6) Appendices:

(a) Resumes or position descriptions of key staff.

(b) Contractor/Consultant resumes or qualifications and scope of work.

(c) Current Indirect Cost Rate Agreement.

(d) Organizational Chart (optional).

(e) Audits.

B. The project and budget narratives must:

(1) Be single spaced.

(2) Be typewritten.

(3) Have consecutively numbered pages.

(4) Use black type not smaller than 12 characters per one inch.

(5) Be printed on one side only of standard size 8½″ x 11″ paper.

C. The seven page limit for the narrative does not include the work plan, standard forms, Tribal resolutions or letters of support, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements:

All Federal-wide public policies apply to IHS grants with exception of the Lobbying and Discrimination public policy.

3. Submission Dates and Times:

Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST) on the deadline date. If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the grantee must submit a request, in writing (e-mails are acceptable), to Michelle Bulls, DGM, at *Michelle.Bulls@ihs.gov*, to obtain approval to submit a paper application. The request must be submitted at least 15 days prior to the application deadline and should include a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded by the applicant from Grants.gov and sent directly to John Hoffman, Division of Grants Management, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852 by the due date, June 22, 2009. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the applicant without review or consideration. Late applications will not be accepted for processing nor considered for funding and will be returned to the applicant. IHS will not acknowledge receipt of applications.

4. Intergovernmental Review:

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions:

A. Each planning cooperative agreement shall not exceed $75,000, including direct and appropriate indirect costs.

B. Only one planning cooperative agreement will be awarded per applicant.

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov*. The Contact Center hours of operation are Monday-Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance please call the DGM at (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registration (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications. CCR is the primary registrant database for the Federal Government and collects, validates, stores, and disseminates data in support of agency acquisition missions.

To submit an application electronically, please go to *http://www.Grants.gov* and select the ''Apply for Grants'' link on the home page. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport*.
- Upon contacting Grants.gov, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from DGM must be obtained.
- Upon entering the Grants.gov site, there is information available outlining the requirements to the applicant regarding electronic submission of an application through Grants.gov, as well as the hours of operation. We strongly

encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.

- To use Grants.gov, the applicant must have a Data Universal Numbering System (DUNS) Number and register in the CCR. You should allow a minimum of ten days working days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The IHS DGM will retrieve your application from Grants.gov. The DGM will not notify applicants that the application has been received.
- You may access the electronic application for this program on *http://www.Grants.gov*.
- You may search for the downloadable application package by either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–2009–IHS–TSGP–0001.
- If submission of a paper application is requested and approved, the original and two copies must be sent to the appropriate grants contact listed in Section IV.3.
- E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to obtain a Data Universal Number System (DUNS) number from Dun and Bradstreet to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many Tribes or Tribal organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your Tribe or Tribal organization has a DUNS number.

Registration with the CCR is free of charge. Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister*. More detailed information regarding these registration processes can be found at *http://www.grants.gov*.

V. Application Review Information

1. Criteria

A. Goals and objectives of the project (30 points)

Are the goals and objectives measurable and consistent with the purpose of the program and the needs of the people to be served, and are they achievable within the proposed time frame?

B. Organizational Capabilities and Qualifications (25 points)

Describe the organizational structure of the tribe and their ability to manage the proposed project. Include resumes or position descriptions of key staff showing requisite experience and expertise and, where applicable, include resumes and scope of work for consultants that demonstrate experience and expertise relevant to the project.

C. Methodology (20 points)

Describe fully and clearly the methodology and activities that will be used to accomplish the goals and objectives of the project.

D. Budget And Budget Justification (15 points)

Submit a line-item budget with a narrative justification for all expenditures identifying reasonable and allowable costs necessary to accomplish the goals and objectives as outlined in the project narrative.

E. Management of Health Program(s) (10 points)

Does the applicant propose an improved approach to managing the health program(s) and indicate how the delivery of quality health services will be maintained under self-governance?

2. Review and Selection Process

In addition to the evaluation criteria in Section V.1., applications are considered according to the following:

A. Application Submission:

(1) The applicant and proposed project type is eligible in accordance with this cooperative agreement announcement.

(2) Abstract, narrative, budget, required forms, appendices and other material submitted meet the requirements of the announcement, allowing the review panel to undertake an in-depth evaluation.

(3) Applicants must not have previously received a planning cooperative agreement award.

B. Competitive Review of Eligible Applications:

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit based on the evaluation criteria by the Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The ORC uses the criteria to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications scored by the ORC at 60 points or above will be recommended for approval and forwarded to the DGM for cost analysis and further recommendation. The TSGP official will forward the recommended approval list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved.

Note: In making final selections, the IHS Director will consider the ranking factor and the status of the applicant's three previous years' single audit reports. The comments from the ORC will be advisory only. The IHS Director will make the final decision on awards.

VI. Award Administration Information

1. Award Notices:

The Notice of Award (NoA) will be initiated by the DGM and will be mailed via postal mail to each entity that is

approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document for which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Final Executive Summary which identifies the weaknesses and strengths of the application submitted. Any correspondence other than the NoA announcing to the Project Director that an application was selected is not an authorization to begin performance.

2. Administrative Requirements:

Grants are administrated in accordance with the following documents:

- This Program Announcement.
- 45 CFR part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR part 74, ''Uniform Administrative Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non Profit Organizations, and Commercial Organizations.''
- Grants Policy Guidance: HHS Grants Policy Statement, January 2007.
- Cost Principles: OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' (Title 2 Part 225).
- Administrative Requirements: OMB Circular A–122, ''Non-Profit Organizations'' (Title 2 Part 230).
- Audit Requirements: OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect Costs:

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with the HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGM at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGM.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (*http://rates.psc.gov/*) and the Department of the Interior National Business Center (1849 C St. NW., Washington, DC 20240) *http://www.nbc.gov/acquisition/ics/icshome.html*. If your organization has questions regarding the indirect cost policy, please contact the DGM at (301) 443–5204.

4. Reporting:

A. Progress Report. Program progress reports are required semi-annually. These reports must be submitted within 30 days of the end of the half year and will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting. The final SF–269 must be verified from the grantee's records on how the value was derived. Grantees must submit the reports consistent with the applicable deadlines.

Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. IHS Agency Contact(s)

1. Questions on the programmatic issues may be directed to: Matt Johnson, Policy Analyst, Office of Tribal Self-Governance, *Telephone No.:* (301) 443–7821, *Fax No.:* (301) 443–1050, *E-mail: matthew.johnson@ihs.gov*.

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Grants Management Specialist, Division of Grants Management, *Telephone No.:* (301) 443–5204, *Fax No.:* (301) 443–9602, *E-mail: john.hoffman2@ihs.gov*.

VIII. Other Information

The Public Health Service (PHS) strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: May 20, 2009.

Randy Grinnell,

Deputy Director, Management Operations, Indian Health Service.

[FR Doc. E9–12316 Filed 5–26–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Tribal Self-Governance Program; Negotiation Cooperative Agreement

Announcement Type: New Funding.

Announcement Number: HHS–2009–IHS–TSGN–0001.

Catalog of Federal Domestic Assistance Number: 93.444.

Key Dates:

Application Deadline Date: June 22, 2009.

Review Date: July 6–7, 2009.

Anticipated Start Date: August 3, 2009.

I. Funding Opportunity Description

The purpose of the Negotiation Cooperative Agreement is to provide resources to Tribes interested in participating in the Tribal Self-Governance Program (TSGP), as authorized by Public Law (Pub. L.) 106–260, the Tribal Self-Governance Amendments of 2000, Title V of the Indian Self-Determination and Education Assistance Act, Public Law 93–638, as amended (Title V) (25 U.S.C. 458aaa–2(e)). There is limited competition under this announcement because the authorizing legislation restricts eligibility to Tribes that meet

specific criteria (Refer to Section III.1.A., ELIGIBLE APPLICANTS in this announcement). The TSGP is designed to promote Self-Determination by enabling Tribes to assume control of Indian Health Service (IHS) programs, services, functions, and activities, or portions thereof (PSFAs), through compacts negotiated with the IHS. The Negotiation Cooperative Agreement provides a Tribe with funds to help cover the expenses involved in preparing for and negotiating a compact with the IHS. This program is described at 93.444 in the Catalog of Federal Domestic Assistance (CFDA).

The Negotiation Cooperative Agreement provides resources to assist Indian Tribes with negotiation activities that include but are not limited to:

1. Determine what PSFAs will be negotiated.
2. Identification of Tribal funding shares that will be included in the funding agreement (FA).
3. Development of the terms and conditions that will be set forth in the FA.

Indian Tribes that have completed comparable health planning activities in previous years using Tribal resources but have not received a self-governance planning cooperative agreement award are eligible to apply for a Negotiation Cooperative Agreement. The award of a Negotiation Cooperative Agreement is not a prerequisite to enter the TSGP.

II. Award Information

Type of Awards: Cooperative Agreement.

Estimated Funds Available: The total amount identified for Fiscal Year (FY) 2009 is $240,000 for approximately eight Tribes. Awards under this announcement are subject to the availability of funds.

Anticipated Number of Awards: The estimated number of awards under the program to be funded is approximately eight.

Project Period: 12 months.

Award Amount: $ 30,000 per year.

Programmatic Involvement: Self-Governance Negotiation Cooperative Agreements entail substantial IHS programmatic involvement to establish a process through which Tribes can effectively approach the IHS to identify PSFAs and associated funding that could be incorporated into their programs.

The IHS roles and responsibilities will include:

- Providing a description of PSFAs and associated funding at all levels, including funding formulas and methodologies related to determining Tribal shares.
- Identification of IHS staff that will consult with applicants on methods currently used to manage and deliver health care.
- Provide applicants with statutes, regulations, and policies that provide authority for administering IHS programs, including contract support costs criteria for new or expanded programs.

The Grantee's roles and responsibilities are essential to the overall success of the project. Therefore the grantee must:

- Determine the PSFAs and associated funding the Tribe may elect to assume.
- Prepare to discuss each PSFA in comparison to the current level of services provided, so that an informed decision can be made on new program assumption.
- Develop a compact and FA to submit to the Agency Lead Negotiator prior to negotiations. The Agency Lead Negotiator is the Federal official with the delegated authority of the IHS Director to negotiate compacts and funding agreements on behalf of the IHS.

III. Eligibility Information

1. Eligible Applicants

To be eligible for a Negotiation Cooperative Agreement under this announcement, an applicant must:

A. Be a Federally-recognized Tribe as defined in 25 U.S.C. 450b(e). However, Alaska Native Villages or Alaska Native Village Corporations are not eligible if they are located within the area served by an Alaska Native regional health entity already participating in the Alaska Tribal Health Compact. Those Tribes not represented by a self-governance Tribal consortium funding agreement within their area may still be considered to participate in the TSGP.

B. Submit a resolution or official action from the appropriate governing body authorizing the submission of the Negotiation Cooperative Agreement application. An Indian Tribe that is proposing a Negotiation Cooperative Agreement affecting another Indian Tribe must include resolutions from all affected Tribes to be served. For Tribal consortia applying for a Negotiation Cooperative Agreement, individual Tribal Council Resolutions from all individual Tribes whose PSFAs will be compacted must be submitted.

Draft resolutions are acceptable in lieu of an official resolution to submit with the application. However, an official signed Tribal resolution must be received by the Division of Grants Management (DGM), *Attn:* John Hoffman, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, prior to the evaluation on July 6, 2009. If an official signed resolution is not submitted by July 6, 2009, the application will be considered incomplete and will be returned to the applicant without further consideration.

*It is highly recommended that the Tribal resolution be sent by a delivery method that includes proof of receipt.

C. Demonstrate, for three fiscal years, financial stability and financial management capability, which is defined as no uncorrected significant and material audit exceptions in the required annual audit of the Indian Tribe's self-determination contracts or self-governance funding agreements with any Federal agency. Grantees are required to submit annual audit reports for the three years prior to the year in which the application will be submitted. The applicants may scan the documents and attach them to the electronic application. If the applicant determines that the audit reports are too lengthy, the applicants may submit them separately via regular mail by the due date, June 22, 2009. Applicants sending in audit reports via regular mail must submit two copies of the audits for the three previous fiscal years under separate cover directly to the DGM, *Attn:* John Hoffman, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852, referencing the Funding Opportunity Number, HHS–2009–IHS–TSGN–0001, as prescribed by Public Law 98–502, the Single Audit Act, as amended (*see* OMB Circular A–133, revised June 24, 1997, Audits of States, Local Governments, and Non-Profit Organizations). If this documentation is not submitted with the application by the application receipt date, June 22, 2009, the application will be considered incomplete and will be returned to the applicant without further consideration. Applicants must include the grant tracking number assigned to their electronic submission by Grants.gov and the date submitted via Grants.gov in their cover letter transmitting the required audits for the previous three fiscal years.

2. Cost Sharing or Matching

The Negotiation Cooperative Agreement does not require matching funds or cost sharing to participate in the competitive grant process.

3. Other Requirements

A. This program is described at 93.444 in the CFDA.

B. If the application budget exceeds the stated dollar amount that is outlined

within this announcement, the application will be returned to the applicant without further consideration.

IV. Application and Submission Information

1. Applicant package may be found through Grants.gov (*http://www.Grants.gov*) or at: *http://www.ihs.gov/NonMedicalPrograms/gogp/index.cfm?module=gogp_funding.*

Information regarding this announcement may also be found on the Office of Tribal Self-Governance Web site at: *http://www.ihs.gov/NonMedicalProgramsv/SelfGovernance/index.cfm?module=planning_negotiation.*

2. Content and Form of Application Submission:

A. The application must contain the following:

(1) Table of Contents.

(2) Abstract (one page) summarizing the project.

(3) Narrative (no more than seven pages) providing:

(a) Background information on the Tribe.

(b) Proposed scope of work, objectives, and activities that provide a description of what will be accomplished including a one-page Time Frame Chart.

(4) Budget narrative and justification.

(5) Tribal Resolution (or official action).

(6) Appendices:

(a) Work plan for proposed objectives.

(b) Resumes or position descriptions of key staff.

(c) Contractor/Consultant resumes or qualifications and scope of work.

(d) Current Indirect Cost Agreement.

(e) Organizational Chart (optional).

(f) Audits.

B. The project and budget narratives must:

(1) Be single spaced.

(2) Be typewritten.

(3) Have consecutively numbered pages.

(4) Use black type not smaller than 12 characters per one inch.

(5) Be printed on one side only of standard size 8½″ x 11″ paper.

C. The seven page limit for the narrative does not include the work plan, standard forms, Tribal resolutions or letters of support, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination public policy.

3. Submission Dates and Times:

Applications must be submitted electronically through Grants.gov by 12 midnight Eastern Standard Time (EST) on the deadline date. If technical challenges arise and the applicant is unable to successfully complete the electronic application process, the grantee must submit a request, in writing (e-mails are acceptable), to Michelle Bulls, DGM, at *Michelle.Bulls@ihs.gov,* to obtain approval to submit a paper application. The request must be submitted at least 15 days prior to the application deadline and should include a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded by the applicant from Grants.gov and sent directly to John Hoffman, Division of Grants Management, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852 by the due date, June 22, 2009. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the applicant without review or consideration. Late applications will not be accepted for processing nor considered for funding and will be returned to the applicant. IHS will not acknowledge receipt of applications.

4. Intergovernmental Review:

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. Funding Restrictions:

A. Each negotiation cooperative agreement shall not exceed $30,000.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one Negotiation Cooperative Agreement will be awarded per applicant.

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1–800–518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance please call the DGM at (301) 443–6290 and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. The applicant must seek assistance at least fifteen days prior to the application deadline. Applicants that do not adhere to the timelines for Central Contractor Registration (CCR) and/or Grants.gov registration and/or requesting timely assistance with technical issues will not be a candidate for paper applications. CCR is the primary registrant database for the Federal Government and collects, validates, stores, and disseminates data in support of agency acquisition missions.

To submit an application electronically, please go to *http://www.Grants.gov* and select the ''Apply for Grants'' link on the home page. Download a copy of the application package on the Grants.gov website, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if you have technical problems submitting your application on-line, please contact Grants.gov Customer Support at: *http://www.grants.gov/CustomerSupport*
- Upon contacting Grants.gov obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from the DGM must be obtained.
- Upon entering the Grants.gov site, there are application instructions available to applicants under this announcement that outline the requirements of the Grants.gov submission process, as well as the hours of operation. We strongly encourage all applicants not to wait until the deadline date to begin the application process through Grants.gov as the registration process for CCR and Grants.gov could take up to fifteen working days.
- To use Grants.gov, you, as the applicant, must have a Data Universal Number System (DUNS) number and register in the CCR. You should allow a minimum of ten days working days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.
- Your application must comply with any page limitation requirements described in the program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The IHS DGM will retrieve your application from Grants.gov. The DGM will not notify

applicants that the application has been received.

- You may access the electronic application for this program on *http://www.Grants.gov*.
- You may search for the downloadable application package either by the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.
- The applicant must provide the Funding Opportunity Number: HHS–2009–IHS–TSGN–0001.
- If submission of a paper application is requested and approved, the original and two copies must be sent to the appropriate grants contact listed in Section IV.3.
- E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to obtain a DUNS number from Dun and Bradstreet to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling 1–888–227–2423. Please review and complete the CCR Registration Worksheet located on *http://www.grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.grants.gov*.

V. Application Review Information

1. Criteria

A. Demonstration of Previous Planning Activities (30 points)

Has the Indian Tribe determined the PSFAs it will assume? Has the Indian Tribe determined it has the administrative infrastructure to support the assumption of the PSFAs? Are the results of what was learned or is being learned during the planning process clearly stated?

B. Thoroughness of Approach (25 points)

Is a specific narrative provided regarding the direction the Indian Tribe plans to take in the TSGP? How will the Tribe demonstrate improved health and services to the community it serves? Are proposed time lines for negotiations indicated?

C. Project Outcome (25 points)

What beneficial contributions are expected or anticipated for the Tribe? Is information provided on the services that will be assumed? What improvements will be made to manage the health care system? Are Tribal needs discussed in relation to the proposed programmatic alternatives and outcomes which will serve the Tribal community?

D. Administrative Capabilities (20 points)

Does the Indian Tribe clearly demonstrate knowledge and experience in the operation and management of health programs? Is the internal management and administrative infrastructure of the applicant described?

2. Review and Selection Process

In addition to the criteria in Section V.1., applications are considered according to the following:

A. Application Submission

(1) The applicant and proposed project type is eligible in accordance with this announcement.

(2) The application is not a duplication of a previously funded project.

(3) The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation.

(4) Applicants must not have previously received a Negotiation Cooperative Agreement award.

B. Competitive Review of Eligible Applications

Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for merit by the Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V.1. The ORC uses the criteria to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of TSGP funding is not sufficient to support all approved applications. Applications scored by the ORC at 60 points and above will be recommended for approval and forwarded to the DGM for cost analysis and further recommendation. The program official will forward the approval list to the IHS Director for final review and approval. Applications scoring below 60 points will be disapproved.

Note: In making final selections, the IHS Director will consider the ranking factors and the status of the applicant's single audit reports. The comments from the ORC will be advisory only. The IHS Director will make the final decision on awards.

IV. Award Administration Information

1. Award Notices

The Notice of Award (NoA) will be initiated by the DGM and will be mailed via postal mail to each entity that is approved for funding under this announcement. The NoA will be signed by the Grants Management Officer and this is the authorizing document under which funds are dispersed to the approved entities. The NoA will serve as the official notification of the grant award and will reflect the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. The NoA is the legally binding document. Applicants who are approved but unfunded or disapproved based on their Objective Review score will receive a copy of the Final Executive Summary which identifies the weaknesses and strengths of the application submitted. Any correspondence other than the NoA announcing to the Project Director that an application was selected is not an authorization to begin performance.

2. Administrative Requirements

Cooperative Agreements are administered in accordance with the following documents:

- This Program Announcement.
- Program Regulations, 42 CFR Part 136.101 *et seq.*
- 45 CFR Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local and Tribal Governments,'' or 45 CFR Part 74, ''Uniform Administrative

Requirements for Awards to Institutions of Higher Education, Hospitals, Other Non Profit Organizations, and Commercial Organizations.''

• *Grants Policy Guidance:* HHS Grants Policy Statement, January 2007.

• *Cost Principles:* OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments'' (Title 2 Part 225).

• *Administrative Requirements:* OMB Circular A–122, ''Non Profit Organizations'' (Title 2 Part 230).

• *Audit Requirements:* OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

3. Indirect Costs

This section applies to all grant recipients that request reimbursement of indirect costs in their grant application. In accordance with HHS Grants Policy Statement, Part II–27, IHS requires applicants to have a current indirect cost rate agreement in place prior to award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate means the rate covering the applicable activities and the award budget period. If the current rate is not on file with the DGM at the time of award, the indirect cost portion of the budget will be restricted and not available to the recipient until the current rate is provided to the DGM.

Generally, indirect costs rates for IHS grantees are negotiated with the Division of Cost Allocation (*http://rates.psc.gov/*) and the Department of the Interior National Business Center (1849 C St., NW., Washington, DC 20240) *http://www.nbc.gov/acquisition/ics/icshome.html*. If your organization has questions regarding the indirect cost policy, please contact the DGM at (301) 443–5204 or (301) 443–6290.

4. Reporting

A. Progress Report. Program progress reports are required semi-annually. These reports must be submitted within 30 days of the end of the half year and will include a brief comparison of actual accomplishments to the goals established for the period, or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report. Semi-annual financial status reports must be submitted within 30 days of the end of the half year. Final financial status reports are due within 90 days of expiration of the budget/project period. Standard Form 269 (long form) will be used for financial reporting. The final SF–269 must be verified from the grantee's records on how the value was derived. Grantees must submit reports consistent with the applicable deadlines.

Failure to submit required reports within the time allowed may result in suspension or termination of an active cooperative agreement, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in one or both of the following: (1) The imposition of special award provisions; and (2) the non-funding or non-award of other eligible projects or activities. This applies whether the delinquency is attributable to the failure of the grantee organization or the individual responsible for preparation of the reports.

5. Telecommunication for the hearing impaired is available at: TTY (301) 443–6394.

VII. Agency Contact(s)

1. Questions on the programmatic issues may be directed to: Matt Johnson, Policy Analyst, Office of Tribal Self-Governance, *Telephone No.:* (301) 443–7821, *Fax No.:* (301) 443–1050, *E-mail: matthew.johnson@ihs.gov.*

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Grants Management Specialist, Division of Grants Management, Telephone No.: (301) 443–5204, *Fax No.:* (301) 443–9602, *E-mail: john.hoffman2@ihs.gov.*

VIII. Other Information

The Public Health Service (PHS) strongly encourages all cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: May 20, 2009.

Randy Grinnell,

Deputy Director, Management Operations, Indian Health Service.

[FR Doc. E9–12314 Filed 5–26–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Lien Notice

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0012

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Lien Notice. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 11126) on March 16, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 26, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–

13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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.

Title: Lien Notice.

OMB Number: 1651–0012.

Form Number: CBP Form–3485.

Abstract: The Lien Notice, CBP Form–3485, enables the carriers, cartmen, and similar businesses to notify CBP that a lien exists against an individual/business for non-payment of freight charges, etc., so that CBP will not permit delivery of the merchandise from public stores or bonded warehouses until the lien is satisfied or discharged.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Respondents: 112,000.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Total Annual Responses: 112,000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 9,296.

If additional information is required contact: 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.

Dated: May 20, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–12299 Filed 5–26–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Application and Approval To Manipulate, Examine, Sample, or Transfer Goods

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0006.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Application and Approval to Manipulate, Examine, Sample, or Transfer Goods. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 11124–11125) on March 16, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 26, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L.104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

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.

Title: Application and Approval to Manipulate, Examine, Sample, or Transfer Goods.

OMB Number: 1651–0006.

Form Number: CBP Form–3499.

Abstract: CBP Form–3499 is prepared by importers or consignees as an application to request examination, sampling, or transfer of merchandise under CBP supervision. This form is also an application for the manipulation of merchandise in a bonded warehouse, and for abandonment or destruction of merchandise.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses.

Estimated Number of Responses: 151,140.

Estimated Time per Response: 6 minutes.

Estimated Total Annual Burden Hours: 15,114.

If additional information is required contact: 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.

Dated: May 21, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–12303 Filed 5–26–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Agency Information Collection Activities: Cargo Container and Road Vehicle Certification for Transport Under Customs Seal

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: 30-Day Notice and request for comments; Extension of an existing information collection: 1651–0124.

SUMMARY: U.S. Customs and Border Protection (CBP) of the Department of Homeland Security has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act: Cargo Container and Road Vehicle Certification for Transport under Customs Seal. This is a proposed extension of an information collection that was previously approved. CBP is proposing that this information collection be extended with no change to the burden hours. This document is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** (74 FR 5668–5669) on January 30, 2009, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.10.

DATES: Written comments should be received on or before June 26, 2009.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the OMB Desk Officer for Customs and Border Protection, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: U.S. Customs and Border Protection (CBP) encourages the general public and affected Federal agencies to submit written comments and suggestions on proposed and/or continuing information collection requests pursuant to the Paperwork Reduction Act (Pub. L. 104–13). Your comments should address one of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of The proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the 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.

Title: Cargo Container and Road Vehicle Certification for Transport under Customs Seal.

OMB Number: 1651–0124.

Form Number: None.

Abstract: The information collected is used as part of a voluntary program to receive internationally-recognized CBP certification that intermodel container/road vehicles meet the construction requirements of international Customs conventions. Such certification facilitates International trade by reducing intermediate international controls.

Current Actions: There are no changes to the information collection. This submission is being made to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses or other for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Number of Responses per Respondent: 120.

Estimated Number of Responses: 3,000.

Estimated Time per Response: 3.5 hours.

Estimated Total Annual Burden Hours: 10,500.

If additional information is required contact: 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.

Dated: May 20, 2009.

Tracey Denning,

Agency Clearance Officer, Customs and Border Protection.

[FR Doc. E9–12305 Filed 5–26–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Agency Information Collection Activities: Mine, Development, and Mineral Exploration Supplement

AGENCY: U.S. Geological Survey (USGS).

ACTION: Notice of an extension of an information collection (1028–0060).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are notifying the public that we will submit to OMB an information collection request (ICR) to renew approval of the paperwork requirements for ''Mine, Development, and Mineral Exploration Supplement, (1 USGS form).'' This notice provides the public an opportunity to comment on the paperwork burden of this form.

DATES: Submit written comments by July 27, 2009.

ADDRESSES: Please submit a copy of your comments to Phadrea Ponds, USGS Information Collection Clearance Officer, 2150–C Center Avenue, Fort Collins, CO 80525 (mail); 970–226–9230 (fax); or *pponds@usgs.gov* (e-mail). Please reference Information Collection 1028–0060 in the subject line.

FOR FURTHER INFORMATION CONTACT: Shonta E. Osborne at 703–648–7960 or by mail at U.S. Geological Survey, 985 National Center, Sunrise Valley Drive, Reston, VA 20192.

SUPPLEMENTARY INFORMATION:

I. Abstract

Respondents supply the U.S. Geological Survey with domestic production, exploration, and mine development data for nonfuel mineral commodities. This information will be published as an Annual Report for use by Government agencies, industry, academia, and the general public. We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and implementing regulations (43 CFR Part 2), and under regulations at 30 CFR 250.197, ''Data and information to be made available to the public or for limited inspection.'' Responses are voluntary. No questions of a ''sensitive'' nature are asked.

II. Data

OMB Control Number: 1028–0060.

Title: Mine, Development, and Mineral Exploration Supplement.

Form Number: 9–4000–A.

Respondent Obligation: Voluntary.

Frequency of Collection: Annually.

Estimated Number and Description of Respondents: Approximately 719

nonfuel mineral producers and exploration operations.

Estimated Number of Annual Responses: 719.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: 539 hours. We expect to receive 719 annual responses. We estimate an average of 45 minutes per response. This includes the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information.

Estimated Reporting and Recordkeeping ''Non-Hour Cost'' Burden: There are no ''non-hour cost'' burdens associated with this collection of information.

III. Request for Comments

We invite comments concerning this ICR on: (a) Whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, usefulness, and clarity of the information to be collected; and (d) ways to minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, e-mail address or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 20, 2009.

John H. DeYoung, Jr.,

Chief Scientist, Minerals Information Team.

[FR Doc. E9–12280 Filed 5–26–09; 8:45 am]

BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNVB01000.L58740000.EU0000. XFL061F0000; N–82413; 9–08807; TAS:14X5260]

Direct Sale of Public Land in Lander County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The Bureau of Land Management (BLM) proposes to offer two parcels of public land totaling about 2.65 acres by direct, non-competitive sale to adjacent property owners. The sale will be subject to the applicable provisions of Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1713 and 1719, respectively, and BLM land sale and mineral conveyance regulations at 43 CFR 2710 and 2720.

DATES: Interested parties may submit written comments regarding the proposed sale of these public lands until July 13, 2009. The sale will not be before sixty days after the publication of this notice in the **Federal Register**.

ADDRESSES: Mail written comments to BLM Field Manager, Mount Lewis Field Office, Battle Mountain District, 50 Bastain Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Chuck Lane at 775–635–6148.

SUPPLEMENTARY INFORMATION: The sale parcels are in the south central part of Section 19 on the southern slope of Pony Soldier Canyon adjacent to the town of Austin, Nevada and are legally described as:

Mount Diablo Meridian, Nevada

T. 19 N., R. 44 E.,
Sec. 19, lots 28 and 29.

Lot 28 contains 1.82 acres more or less and Lot 29 contains 0.83 acres more or less for a total of 2.65, more or less.

Lot 28 is proposed for sale to Charles Henrickson and Lynn Hendrickson, of Austin, Nevada for the Fair Market Value (FMV) of $7,000. Lot 29 is proposed for sale to Aldeen Penola and Susan Penola, of Austin, Nevada for the FMV of $5,000. An approved appraisal report has been prepared by a state certified appraiser for the purposes of establishing these FMVs. Public land cannot be sold for less than its FMV.

The public land is not required for any federal purpose. This sale is in conformance with the 1986 BLM Shoshone-Eureka Resource Management Plan (RMP), approved on February 26, 1986. The parcels meet the disposal qualification of Section 205 of the Federal Land Transaction Facilitation Act of July 25, 2000 (FLTFA) (43 U.S.C. 2304). The proceeds from the sale of the land will be deposited into the Federal Land Disposal Account for Nevada pursuant to FLTFA.

The land meets the criteria for sale under 43 CFR 2710.0–3(a)(3) where the sale of a parcel because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. The parcels will be offered through direct sale procedures pursuant to 43 CFR 2711.3–3. The sale of these lands also meet the criteria under 43 CFR 2711.3–3(a)(5) which allows direct sales in the case of a need to resolve inadvertent unauthorized use or occupancy of the lands. The residences of the two parties and some outlying structures have inadvertently been constructed on public land. The direct sale would not change the status quo in that no other land uses are expected for these lands.

The BLM prepared an environmental assessment (EA) and provided a 30-day public comment period. No comments were received and a finding of no significant impacts (FONSI) was signed on July 9, 2008. The EA, FONSI, Environmental Site Assessment, Mineral Potential Report, and map are available for review at the Battle Mountain District Office.

Terms and Conditions: Conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for sale have no known mineral value in accordance with Section 209 of FLPMA. Acceptance of a sale offer will constitute an application for conveyance of those mineral interests. In conjunction with the final payment, the purchaser will be required to pay a $50 non-refundable filing fee for processing the conveyance of the mineral interests. Payment must be submitted in the form of a certified check, postal money order, bank draft, or cashier's check made payable in U.S. dollars to the ''Department of the Interior—Bureau of Land Management.''

The following numbered terms and conditions will appear in the conveyance document for this parcel:

1. Oil, gas, and geothermal resources on the land are reserved to the United States; permittees, licensees, and lessees retain the right to prospect for and remove those minerals retained by the United States under applicable law and any regulations that the Secretary of the

Interior may prescribe, including all necessary access and exit rights;

2. A right-of-way is reserved for ditches and canals constructed by authority of the United States under the Act of August 30, 1890 (43 U.S.C. 945);

The parcels are subject to:

1. Valid existing rights;

2. The purchaser/patentee, by accepting patent, agrees to indemnify, defend, and hold the United States harmless from any costs, damages, claims, causes of action, penalties, fines, liabilities, and judgments of any kind arising from the past, present, or future acts or omissions of the patentee, its employees, agents, contractors, or lessees, or a third part arising out of, or in connection with, the patentee's use and/or occupancy of the patented real property. This indemnification and hold harmless agreement includes, but is not limited to, acts and omissions of the patentee, its employees, agents, contractors, or lessees, or third party arising out of or in connection with the use and/or occupancy of the patented real property resulting in: (1) Violations of federal, state, and local laws and regulations that are now, or in the future become, applicable to the real property; (2) Judgments, claims, or demands of any kind assessed against the United States; (3) Costs, expenses, or damages of any kind incurred by the United States; (4) Releases or threatened releases of solid or hazardous waste(s) and/or hazardous substances(s), as defined by federal or state environmental laws, off, on, into, or under land, property, and other interests of the United States; (5) Other activities by which solids or hazardous substances or wastes, as defined by federal and state environmental laws are generated, released, stored, used, or otherwise disposed of on the patented real property, and any cleanup response, remedial action, or other actions related in any manner to said solid or hazardous substances or wastes; or (6) Natural resource damages as defined by Federal and state law. This covenant shall be construed as running with the patented real property and may be enforced by the United States in a court of competent jurisdiction.

3. Pursuant to the requirements established by section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), (42 U.S.C. 9620(h)), as amended by the Superfund Amendments and Reauthorization Act of 1988, (100 Stat. 1670), notice is hereby given that the described lands have been examined and no evidence was found to indicate that any hazardous substances have been stored for one year or more, nor had any hazardous substances been disposed of or released on the subject property.

Encumbrances of record, appearing in the BLM public files for the parcel proposed for sale, are available during normal business hours at the Battle Mountain District Office.

No warranty of any kind, expressed or implied, is given by the United States as to the title, physical condition or potential uses of the parcel of land proposed for sale, and the conveyance of any such parcel will not be on a contingency basis. It is the buyer's responsibility to be aware of all applicable federal, state, or local government laws, regulations, or policies that may affect the subject lands or its future uses. It is also the buyer's responsibility to be aware of existing or prospective uses of nearby properties. Any land lacking access from a public road and highway will be conveyed as such, and future access acquisition will be the responsibility of the buyer.

Only written comments submitted by postal service or overnight mail will be considered properly filed. Electronic mail, facsimile or telephone comments will not be considered as properly filed.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment—you should be aware that your entire comment, including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments including names and street address of respondents will be available for public review at the Battle Mountain District Office during regular business hours, except holidays.

Any adverse comments regarding the proposed sale will be reviewed by the BLM Nevada State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711)

Dated: May 19, 2009.

Douglas W. Furtado,

Field Manager, Mount Lewis Field Office.

[FR Doc. E9–12268 Filed 5–26–09; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: U.S. Department of the Interior, National Park Service, Hawaii Volcanoes National Park, Hawaii National Park, HI; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of the Interior, National Park Service, Hawaii Volcanoes National Park, Hawaii National Park, HI, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Hawaii Volcanoes National Park.

This notice corrects the spelling of one of the Native Hawaiian organizations reported in a Notice of Intent to Repatriate published in the **Federal Register** (74 FR 10755 – 10756, March 12, 2009).

In the **Federal Register** of March 12, 2009 (74 FR 10755 – 10756, March 12, 2009) paragraph numbers 4 through 7 are corrected by substituting ''Laika-a-Manuia Ohana'' for ''Laika-a-Mauia Ohana'' wherever the latter occurs.

Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with the unassociated funerary objects should contact Cindy Orlando, superintendent, Hawaii Volcanoes National Park, Hawaii National Park, HI 96718, telephone (808) 985–6025, before June 26, 2009. Repatriation of the unassociated funerary objects to the Department of Hawaiian Homelands, Hawaii Island Burial Council, Hoohuli Ohana, Hooulu Lahui, Hui Malama I Na Kupuna O Hawai'i Nei, Ka Ohana Ayau, Keaweamahi Ohana, Kekumano Ohana, Laika-a-Manuia Ohana, Na Lei Alii Kawananakoa, Na Papa Kanaka O Pu'ukohola Heiau, Office of Hawaiian Affairs, Royal Hawaiian Academy of Traditional Arts, and Van Horn Diamond Ohana may proceed after that date when the affiliated Native Hawaiian organizations have mutually agreed upon a resolution.

Hawaii Volcanoes National Park is responsible for notifying the Department

of Hawaiian Homelands, Hawaii Island Burial Council, Hoohuli Ohana, Hooulu Lahui, Hui Malama I Na Kupuna O Hawai'i Nei, Ka Ohana Ayau, Keaweamahi Ohana, Kekumano Ohana, Laika-a-Manuia Ohana, Na Lei Alii Kawananakoa, Na Papa Kanaka O Pu'ukohola Heiau, Office of Hawaiian Affairs, Royal Hawaiian Academy of Traditional Arts, and Van Horn Diamond Ohana that this notice has been published.

Dated: May 5, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–12286 Filed 5–26–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items: Maryhill Museum of Art, Goldendale, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the Maryhill Museum of Art, Goldendale, WA, that meet the definition of ''unassociated funerary objects'' under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice corrects a Notice of Intent to Repatriate Cultural Items published in the **Federal Register** (73 FR 16902, March 31, 2008) by including the Confederated Tribes and Bands of the Yakama Nation, Washington, and the Wanapum Band, a non-Federally recognized Indian group.

In the **Federal Register** (73 FR 16902, March 31, 2008), paragraph numbers 6 – 7 are corrected by substituting the following:

Officials of the Maryhill Museum of Art have determined that, pursuant to 25 U.S.C. 3001 (3)(B), the two cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the Maryhill Museum of Art also have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects and the Confederated Tribes of the Umatilla Indian Reservation, Oregon, and Confederated Tribes and Bands of the Yakama Nation, Washington. Furthermore, officials of the Maryhill Museum of Art have determined that there is a cultural relationship between the unassociated funerary objects and the Wanapum Band, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Colleen Schafroth, Executive Director, Maryhill Museum of Art, 35 Maryhill Museum Drive, Goldendale, WA 98620, telephone (509) 773–3733, before June 26, 2009. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Wanapum Band, a non-Federally recognized Indian group, may proceed after that date if no additional claimants come forward. The Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Wanapum Band, a non-Federally recognized Indian group, are jointly claiming the unassociated funerary objects.

The Maryhill Museum of Art is responsible for notifying the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Wanapum Band, a non-Federally recognized Indian group, that this notice has been published.

Dated: April 15, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–12258 Filed 5–26–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Field Museum of Natural History, Chicago, IL. The human remains were removed from Kodiak, Kodiak Island, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by Field Museum of Natural History professional staff in consultation with professional staff of the Alutiiq Museum and Archaeological Repository, Kodiak, AK, on behalf of Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Natives of Kodiak, Inc.; and Sun'aq Tribe of Kodiak.

In 1893, employees of the Field Museum of Natural History purchased human remains representing one individual from Ward's Natural Science Establishment, Rochester, NY (Field Museum of Natural History accession number 407, catalog number 41470). No known individual was identified. No associated funerary objects are present.

The human remains have been identified as Native American based on specific cultural and geographic attributions in Field Museum of Natural History records. The records identify the human remains as ''Eskimo'' from an ''ancient dwelling near St. Paul, Kodiak Isl., Alaska.'' St. Paul, Kodiak Island, AK, is present-day Kodiak, Kodiak Island, AK. The term ''Eskimo'' is used by anthropologists to refer to both the prehistoric and historic Native peoples of the Kodiak region, who are the ancestors of the present-day Alutiiq people. Specifically, the human remains are from an area of the Kodiak archipelago traditionally used by shareholders and citizens of Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Natives of Kodiak, Inc.; and Sun'aq Tribe of Kodiak.

Officials of the Field Museum of Natural History have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of one individual of Native American ancestry. Officials of the Field Museum of Natural History also have determined that,

pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Natives of Kodiak, Inc.; and Sun'aq Tribe of Kodiak.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Helen Robbins, Repatriation Director, Field Museum of Natural History, 1400 South Lake Shore Drive, Chicago, IL 60605–2496, telephone (312) 665–7317, before June 26, 2009. Repatriation of the human remains to Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Natives of Kodiak, Inc.; and Sun'aq Tribe of Kodiak may proceed after that date if no additional claimants come forward.

The Field Museum of Natural History is responsible for notifying Koniag, Inc.; Leisnoi, Inc.; Lesnoi Village (aka Woody Island); Natives of Kodiak, Inc.; and Sun'aq Tribe of Kodiak that this notice has been published.

Dated: May 6, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–12263 Filed 5–26–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the control of the U.S. Department of the Interior, Bureau of Land Management, Alaska State Office, Anchorage, AK. The human remains were removed from Amaknak Island and Unalaska Island, Aleutians East Borough, AK.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by the Bureau of Land Management and Smithsonian Institution professional staff in consultation with representatives of the Ounalashka Corporation and Qawalangin Tribe of Unalaska.

Sometime during the 1950s to 1970s, human remains representing a minimum of one individual were removed from the Kismaliuk Cave site, which is located west of Unalaska on Unalaska Island in the Fox Island group of the eastern Aleutian Islands, Aleutians East Borough, AK. No known individual was identified. No associated funerary objects are present.

Sometime during the 1950s to 1970s, human remains representing a minimum of two individuals were removed from the Amaknak-D site near Unalaska on Amaknak Island in the Fox Island group of the eastern Aleutian Islands, Aleutians East Borough, AK. No known individuals were identified. No associated funerary objects are present.

According to museum records, the human remains were excavated by the now-deceased Dr. William Laughlin of the University of Wisconsin under Federal permits. All excavations were done on land managed by the Bureau of Land Management at the time. No further information was found in museum records. In 2007, these human remains were moved from the University of Wisconsin to the Smithsonian Institution for inventory.

Unalaska Island and nearby Amaknak Island have been inhabited for over 8,000 years by Aleut (Unangan) people. Based on geographical location, oral history, and archeological evidence, the human remains from these two islands are determined to be Native American and ancestors of members of the Ounalashka Corporation and Qawalangin Tribe of Unalaska.

Officials of the Bureau of Land Management have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of three individuals of Native American ancestry. Officials of the Bureau of Land Management have also determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Ounalashka Corporation and Qawalangin Tribe of Unalaska.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Robert E. King, Alaska State NAGPRA Coordinator, Bureau of Land Management, 222 W. 7th Avenue, Box 13, Anchorage, AK 99513–7599, telephone (907) 271–5510, before June 26, 2009. Repatriation of the human remains to the Ounalashka Corporation and Qawalangin Tribe of Unalaska may proceed after that date if no additional claimants come forward.

The Bureau of Land Management is responsible for notifying the Ounalashka Corporation and Qawalangin Tribe of Unalaska that this notice has been published.

Dated: May 13, 2009.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–12271 Filed 5–26–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Control of Gila Cliff Dwellings National Monument, National Park Service, Silver City, NM; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the U.S. Department of the Interior, National Park Service, Gila Cliff Dwellings National Monument, Silver City, NM. The human remains and cultural items were removed from Catron County, NM.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the superintendent, Gila Cliff Dwellings National Monument.

This notice corrects the minimum number of individuals reported for the Main Group Site at Gila Cliff Dwellings National Monument.

In the **Federal Register** of September 26, 1996 (61 FR 50505–50506, September 26, 1996) insert the following paragraph after paragraph number 3:

In the late 1980s, human remains representing a minimum of one individual were illegally removed from the trail near the Main Group Site in Catron County, NM. The remains were mailed to the U.S. Department of Agriculture, U.S. Forest Service, Gila National Forest with a note stating that

the remains were found ''along the Gila Cliff Dwellings NM Trail, mid-way up a flight of steps and at the base of a large rock.'' Based upon the details of the note, soil deposition at the monument, and the expert opinion of the Intermountain Regional Supervisory Archaeologist, the remains have been associated with the Main Group Site. No known individuals were identified. No associated funerary objects are present.

In the **Federal Register** of September 26, 1996 (61 FR 50505–50506, September 26, 1996) paragraph number 6 is corrected by substituting the following paragraph:

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of 47 individuals of Native American ancestry. Officials of the National Park Service have also determined that, pursuant to 25 U.S.C 3001 (3)(A), the 15 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the National Park Service have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico. Further, officials of the National Park Service recognize that there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the Piro-Manso-Tiwa, a non-Federally recognized Indian group.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Steve Riley, superintendent, Gila Cliff Dwellings National Monument, HC 68 Box 100, Silver City, NM 88061, telephone (575) 536–9461, before June 26, 2009. Repatriation of the human remains and associated funerary objects to the Hopi Tribe of Arizona; Pueblo of Acoma, New Mexico; Pueblo of Laguna, New Mexico; and Zuni Tribe of the Zuni Reservation, New Mexico may proceed after that date if no additional claimants come forward.

Gila Cliff Dwellings National Monument is responsible for notifying the Apache Tribe of Oklahoma; Fort McDowell Yavapai Nation, Arizona; Fort Sill Apache Tribe of Oklahoma; Hopi Tribe of Arizona; Jicarilla Apache Nation, New Mexico; Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Navajo Nation, Arizona, New Mexico & Utah; Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Santo Domingo, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah; White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona; and Zuni Tribe of the Zuni Reservation, New Mexico that this notice has been published.

Dated: May 13, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–12270 Filed 5–26–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion: California State Department of Transportation, Sacramento, CA and San Diego State University, San Diego, CA

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the control of the California State Department of Transportation (Caltrans), Sacramento, CA, and in the possession of the San Diego State University, San Diego, CA. The human remains and associated funerary objects were removed from San Diego County, CA.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003 (d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

A detailed assessment of the human remains was made by San Diego State University professional staff on behalf of Caltrans and in consultation with representatives of the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; and the Kumeyaay Cultural Repatriation Committee, which is composed of the authorized NAGPRA representatives of the aforementioned Indian tribes.

Between 1967 and 1971, human remains representing a minimum of one individual were recovered from the Cottonwood Creek site (SDSU–0390, SDI–777) on private land in the vicinity of Cottonwood Valley, San Diego County, CA, during excavations conducted by the University of California, Los Angeles. No known individual was identified. The 57 associated funerary objects are 1 chipped stone flake, 1 pottery sherd, and 55 faunal remains.

Human remains and associated funerary objects from the Cottonwood Creek site (SDSU–0390, SDI–777) were previously reported in a Notice of Inventory Completion published in the **Federal Register** (65 FR 63622–63624, October 24, 2000), and subsequently repatriated. An additional review of the museum collections resulted in the identification of an additional individual and 57 associated funerary objects from the Cottonwood Creek site.

Based on site location, ethnographic information, continuity of occupation, and consultation evidence, this individual has been identified as Kumeyaay. The Kumeyaay Indians are represented today by the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Officials of Caltrans and San Diego State University have determined that, pursuant to 25 U.S.C. 3001 (9–10), the human remains described above represent the physical remains of a minimum of one individual of Native American ancestry. Officials of Caltrans and San Diego State University also have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the 57 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of Caltrans and San Diego State University have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the associated funerary objects should contact Lynn H. Gamble, Director, Collections Management Program, San Diego State University, 5500 Campanile Drive, San Diego, CA 92182–4443, telephone (619) 594–2305, before June 26, 2009. Repatriation of the human remains and associated funerary objects to the Kumeyaay Cultural Repatriation Committee, on behalf of the Federally-recognized Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California, may proceed after that date if no additional claimants come forward.

San Diego State University is responsible for notifying the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California; Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California; Capitan Grande Band of Diegueno Mission Indians of California; Ewiiaapaayp Band of Kumeyaay Indians, California; Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California; Jamul Indian Village of California; La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California; Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California; Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California; San Pasqual Band of Diegueno Mission Indians of California; Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California; Sycuan Band of Diegueno Mission Indians of California; Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California; and the Kumeyaay Cultural Repatriation Committee, which is composed of the authorized NAGPRA representatives of the aforementioned Indian tribes, that this notice has been published.

Dated: April 15, 2009

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. E9–12259 Filed 5–26–09; 8:45 am]

BILLING CODE 4312–50–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–923–1430–ET; COC–70988]

Public Land Order No. 7733; Withdrawal of Public Land for Emerald Mountain Recreation Management Area; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 4,138 acres of public lands from all forms of appropriation under the public land laws, including the United States mining laws, and the mineral and geothermal leasing laws, for a period of 20 years for the Bureau of Land Management to protect the scenic, recreation, water quality and wildlife habitat values of the Emerald Mountain Recreation Management Area in Routt County, Colorado.

DATES: *Effective Date:* May 22, 2009.

FOR FURTHER INFORMATION CONTACT: John D. Beck, Branch of Lands and Realty, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3882.

SUPPLEMENTARY INFORMATION: The lands embraced within the exterior boundaries of this withdrawal were recently acquired by the Bureau of Land Management from the State of Colorado to protect the scenic, recreation, water quality and wildlife habitat values.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act, 43 U.S.C. 1714 (2000), it is ordered as follows:

1. Subject to valid existing rights, the following described lands are hereby withdrawn from all forms of appropriation under the public land laws, including location and entry under the United States mining laws, (30 U.S.C. Ch. 2 (2000)), and the geothermal and mineral leasing laws, to protect scenic, recreation, water quality and wildlife values of the Emerald Mountain Recreation Management Area: Sixth Principal Meridian

T. 6 N., R. 85 W.,

sec. 13, SE¼SE¼, excepting and excluding the west 100 feet thereof and the north 100 feet thereof;

sec. 15, S½NE¼, S½SW¼, and SE¼;

sec. 21, that portion of the S½N½SE¼NE¼, S½SE¼NE¼, and E½SE¼ lying North and East of the centerline of the Cow Creek Road (County Road No. 45) excepting the traverse and right-of-way, whether an easement or in fee, for County Road No. 45;

sec. 22;

sec. 23, W½NW¼, W½SE¼NW¼, SE¼SE¼NW¼, SW¼, S½N½SE¼, and S½SE¼;

sec. 24, NE¼NE¼, W½NE¼, E½E½NW¼, E½SW¼, S½NW¼SW¼, SW¼SW¼, NW¼SE¼, and S½SE¼;

secs. 25 and 26;

secs. 27, 34, and 35, those portions lying north and east of the centerline of the Cow Creek Road (County Road No. 45);

Excepting Therefrom a parcel of land containing 123.78 acres located in secs. 23 and 24 of T. 6 N., R. 85 W. of the 6th P.M. Routt County, Colorado, described as follows:

Beginning at a point on the North side of an existing road (top of ridge) and on the North line of the said NW¼NW¼ of sec. 23 from which the Northwest corner of said sec. 23 bears N89°13′32″W 164.58 feet;

Thence East along the North line of the said NW¼NW¼ of sec. 23 to the Northwest corner of the NE¼NW¼ of sec. 23 and the Northwest corner of a parcel of land which is described at Reception Number 610794 (State: of Colorado Patent No. 8350) of the Routt County Clerk and Recorders Records;

Thence South along the West line of the said NE¼NW¼ of sec. 23 and along the West line said Reception Number 610794;

Thence East along the South line of the said NE¼NW¼ of sec. 23 and along a South line said Reception Number 610794;

Thence South along the West line of the said NE¼SE¼NW¼ of sec. 23 and along a West line said Reception Number 610794;

Thence East along the South line of the said NE¼SE¼NW¼ of sec. 23 and along a South line said Reception Number 610794;

Thence South along the West line of the said NE¼ of sec. 23 and along a West line said Reception Number 610794;

Thence South along the West line of the said N½N½SE¼ of sec. 23 and along a West line said Reception Number 610794;

Thence East along the South line of the said N½N½SE¼ of sec. 23 and along the South line said Reception Number 610794;

Thence East along the South line of the said N½NW¼SW¼ of sec. 24 and along the South line said Reception Number 610794;

Thence North along the East line of the said N½NW¼SW¼ of sec. 24 and along an East line said Reception Number 610794;

Thence East along the South line of the said W½SE¼NW¼ of sec. 24 and along a South line said Reception Number 610794;

Thence North along the East line of the said W½SE¼NW¼ of sec. 24 and along an East line said Reception Number 610794 to the VOR Boundary Line (State Lease No. S–40743);

Thence along the VOR Boundary Line S12°50′38″E 299.28 feet;

Thence S33°42′38″E 22.93 feet to the said North side of an existing road (top of ridge);

Thence along the North side of an existing road (top of ridge) the following 110 calls;

Thence S50°53′35″W 74.77 feet;
Thence S30°01′45″W 154.66 feet;
Thence S28°31′35″W 87.10 feet;
Thence S69°35′54″W 81.43 feet;
Thence S85°40′20″W 60.86 feet;
Thence S49°17′24″W 58.86 feet;
Thence S41°56′59″W 134.03 feet;
Thence S37°38′18″W 87.73 feet;
Thence S15°35′30″W 79.00 feet;
Thence S49°46′21″W 108.55 feet;
Thence S12°48′13″W 74.61 feet;
Thence S38°47′34″W 88.97 feet;
Thence N85°43′33″W 115.46 feet;
Thence N31°26′52″W 73.54 feet;
Thence N14°56′20″W 104.21 feet;
Thence N56°36′48″W 84.47 feet;
Thence N86°58′32″W 25.88 feet;
Thence N54°51′32″W 72.09 feet;
Thence S85°51′12″W 105.33 feet;
Thence S61°17′43″W 268.38 feet;
Thence S40°58′52″W 112.92 feet;
Thence S52°06′13″W 122.46 feet;
Thence S60°18′48″W 136.16 feet;
Thence S76°44′29″W 99.18 feet;
Thence S86°42′26″W 66.02 feet;
Thence S68°09′27″W 71.14 feet;
Thence S72°42′33″W 86.80 feet;
Thence S76°38′34″W 74.19 feet;
Thence S58°25′05″W 104.46 feet;
Thence S83°56′22″W 58.42 feet;
Thence N64°17′55″W 154.26 feet;
Thence S84°05′15″W 114.25 feet;
Thence S88°58′19″W 132.72 feet;
Thence S68°36′20″W 53.92 feet;
Thence S76°57′09″W 103.67 feet;
Thence N82°43′50″W 152.63 feet;
Thence S65°04′59″W 131.51 feet;
Thence S81°58′30″W 50.01 feet;
Thence N66°22′44″W 103.89 feet;
Thence N67°36′04″W 142.14 feet;
Thence N81°15′18″W 101.71 feet;
Thence N88°03′08″W 91.61 feet;
Thence N85°51′10″W 83.84 feet;
Thence S63°07′53″W 96.98 feet;
Thence S87°19′55″W 52.62 feet;
Thence N81°02′21″W 52.60 feet;
Thence S72°58′28″W 102.27 feet;
Thence N85°45′58″W 46.89 feet;
Thence N76°50′26″W 121.49 feet;
Thence N66°37′46″W 82.62 feet;
Thence N70°03′27″W 102.49 feet;
Thence N86°09′48″W 144.29 feet;
Thence N61°19′11″W 54.13 feet;
Thence N77°29′21″W 236.46 feet;
Thence N65°54′30″W 63.61 feet;
Thence N51°07′21″W 64.32 feet;
Thence N39°08′23″W 177.57 feet;
Thence N63°13′32″W 88.53 feet;
Thence N35°43′27″W 75.59 feet;
Thence N66°17′06″W 108.99 feet;
Thence N57°14′02″W 58.33 feet;
Thence N82°43′22″W 85.03 feet;
Thence N37°25′09″W 44.39 feet;
Thence N24°09′53″W 38.91 feet;
Thence N47°56′52″W 94.25 feet;
Thence N41°56′57″W 110.76 feet;
Thence N25°13′06″W 129.66 feet;
Thence N41°27′24″W 64.04 feet;
Thence N11°22′34″W 70.79 feet;
Thence N41°16′24″W 120.61 feet;
Thence N59°17′37″W 98.64 feet;
Thence N62°59′30″W 23.50 feet;
Thence N32°41′09″W 75.57 feet;
Thence N41°54′29″W 85.05 feet;
Thence N29°45′20″W 96.36 feet;
Thence N04°54′34″W 105.47 feet;
Thence N17°02′34″W 104.53 feet;
Thence N42°24′33″W 42.32 feet;
Thence N73°51′48″W 148.88 feet;
Thence N66°36′39″W 31.71 feet;
Thence N45°56′30″W 110.06 feet;
Thence N3730 18′′W 78.07 feet;
Thence N29°31′07″W 97.61 feet;
Thence N39°24′56″W 140.33 feet;
Thence N31°39′34″W 136.12 feet;
Thence N41°49′43″W 89.75 feet;
Thence N68°54′22″W 109.23 feet;
Thence N51°31′11″W 70.02 feet;
Thence N15°08′01″W 15.17 feet;
Thence N15°27′12″E 108.56 feet;
Thence N21°37′52″E 105.46 feet;
Thence N06°44′53″E 107.26 feet;
Thence N03°03′35″E 68.31 feet;
Thence N21°05′16″E 93.84 feet;
Thence N00°26′24″E 65.96 feet;
Thence N09°16′03″E 57.58 feet;
Thence N18°37′13″W 72.17 feet;
Thence N37°53′14″W 124.39 feet;
Thence N61°43′36″W 89.58 feet;
Thence N50°42′33″W 86.54 feet;
Thence N53°38′51″W 83.66 feet;
Thence N37°16′48″W 46.09 feet;
Thence N17°28′58″W 56.27 feet;
Thence N06°24′06″W 44.49 feet;
Thence N16°53′31″W 106.95 feet;
Thence N05°02′10″W 224.13 feet;
Thence N14°40′37″W 82.61 feet;
Thence N28°19′20″W 76.69 feet;
Thence N11°15′24″W 69.14 feet;
Thence N00°55′11″W 21.10 feet to the Point of Beginning.

All bearings shown hereon are based upon the North line of the NE¼ of said sec. 24 as being N89°24′02″W.

The areas described aggregate 4,138.52 acres, more or less, in Routt County according to United States Government Survey and James B. Ackerman, R.L.S. 416394, of Emerald Mountain Surveys, Inc., Steamboat Springs, Colorado 80477.

2. This withdrawal will expire 20 years from the effective date of this order, unless, as a result of a review

conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (2000), the Secretary determines that the withdrawal shall be extended.

Dated: May 19, 2009.

Ken Salazar,

Secretary of the Interior.

[FR Doc. E9–12307 Filed 5–21–09; 4:15 pm]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–451 (Second Review)]

Gray Portland Cement and Cement Clinker From Mexico

AGENCY: United States International Trade Commission.

ACTION: Termination of review.

SUMMARY: On April 6, 2009, the U.S. Department of Commerce published notice of the revocation of its antidumping duty order on gray portland cement and cement clinker from Mexico and termination of the sunset review of the order (74 FR 15435). Accordingly, the Commission gives notice that its antidumping duty review concerning gray portland cement and cement clinker from Mexico (Investigation No. 731–TA–451 (Second Review)) is terminated.

DATES: *Effective Date:* April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191 or via e-mail *james.mcclure@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.40 of the Commission's rules (19 CFR 207.40).

By order of the Commission.

Issued: May 20, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–12261 Filed 5–26–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Pursuant to Department of Justice policy, notice is hereby given that, on May 18, 2009, a proposed Consent Decree in *In re James Pielet,* Case No. 06–01026 (Bankr. N.D. Ill.) and *In re J.P. Investments, Inc.,* Case No. 06–01037 (Bankr. N.D. Ill.) was lodged with the United States Bankruptcy Court for the Northern District of Illinois. The Consent Decree provides for recovery of response costs that the U.S. Environmental Protection Agency (''EPA'') has incurred and will incur in addressing environmental contamination at two sites: the Midwest Metallics Site in Summit, Illinois and the H&H Enterprises Site in Gary, Indiana. The United States has asserted a claim against the J.P. Investments bankruptcy estate for $5,087,276 in costs associated with the Midwest Metallics Site and it has asserted a claim against the James Pielet bankruptcy estate for $3,210,411.66 in costs associated with the H&H Enterprises Site.

The proposed Consent Decree would resolve the United States' claims in the two bankruptcy cases in exchange for providing EPA: (i) A $700,000.00 allowed secured claim against the James Pielet bankruptcy estate, to be paid on a priority basis pursuant to 11 U.S.C. 725; (ii) a $2,510,411.66 allowed general unsecured claim against the James Pielet bankruptcy estate; (iii) a $3,391,517.33 allowed general unsecured claim against the J.P. Investments bankruptcy estate; and (iv) a $1,695,758.67 allowed general unsecured subordinated claim against the J.P. Investments bankruptcy estate.

The Department of Justice will receive comments relating to the Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and mailed either electronically to *pubcomment-ees.enrd@usdoj.gov* or in hard copy to U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611. Comments should refer to *In re James Pielet* and *In re J.P. Investments, Inc.* and D.J. Ref. Nos. 90–11–2–1092/2 and 90–11–2–1092/3.

The Consent Decree may be examined at the offices of the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 14th Floor, Chicago, Illinois. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $4.25 (17 pages at 25 cents per page reproduction cost) payable to the U.S. Treasury.

Maureen M. Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–12185 Filed 5–26–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree In United States v. MI Metals, Inc. Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on May 20, 2009, a proposed consent decree (''Consent Decree'') between MI Metals, Inc. (''MI Metals'') and the United States, Civil Action No. 8:09-cv-921, was lodged with the United States District Court for the Middle District of Florida, Tampa Division.

The Consent Decree would resolve claims asserted by the United States against MI Metals pursuant to Section 113(b) of the Clean Air Act (the ''Act''), 42 U.S.C. 7413(b), seeking injunctive relief and the assessment of civil penalties for MI Metal's violations of Section 112 of the Act, 42 U.S.C. 7412, and the National Emissions Standards for Hazardous Air Pollutants (''NESHAP'') for Secondary Aluminum Production, codified at 40 CFR Part 63, Subparts A and RRR, and Rule 62–204.800(11) of the Florida Administrative Code (which incorporates the federal regulations by reference). Pinellas County is a party to the settlement and has moved to intervene in this action.

MI Metals operates a secondary aluminum production facility in Oldsmar, Pinellas County, Florida. The

complaint filed by the United States alleges that MI Metals began charging dirty (coated) scrap into the furnace at its Oldsmar, Florida facility on July 14 2003, which made this furnace subject to the testing, operating, and monitoring requirements of 40 CFR Part 63, Subparts A and RRR. The United States' Complaint further alleges that MI Metals violated a number of these requirements, including demonstration of an adequate emissions capture/collection system on the furnace; appropriate performance testing to demonstrate compliance with the regulation's dioxin and furan (''D/F'') emissions limit; and monitoring of key operating parameters to assure ongoing compliance with the emissions limit.

The proposed Consent Decree would require MI Metals to make modifications to the emissions hood on the furnace; to re-test the furnace; and to comply with a number of operating and monitoring requirements. Finally, the proposed Consent Decree would require MI Metals to pay a $210,000 civil penalty.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *MI Metals, Inc.,* D.J. Ref. No. 90–5–2–1–08988.

The Consent Decree may be examined at the Office of the United States Attorney, Middle District of Florida, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602, and at U.S. EPA Region 4, 61 Forsyth Street, SW., Atlanta, Georgia, 30303. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $10.00 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–12188 Filed 5–26–09; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (09–041)]

Notice of Centennial Challenges—2009 Lunar Lander Challenge

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Centennial Challenges—2009 Lunar Lander Challenge

SUMMARY: This notice is issued in accordance with 42 U.S.C. 2451(314)(d). The 2009 Lunar Lander Challenge is now scheduled and teams that wish to compete may soon register (see contact information below). The NASA Centennial Challenges is a program of prize contests to stimulate innovation and competition in technologies of interest and value to NASA and the nation. The Lunar Lander Challenge is a prize competition designed to accelerate technology developments in reusable rocket-powered vehicles including vehicles capable of ferrying cargo or humans between lunar orbit and the lunar surface as well as future Earth launch vehicles or other rocket-powered vehicles. The Lunar Lander Challenge is administered for NASA by the X Prize Foundation. The prize purse is funded by NASA.

DATES: The 2009 Lunar Lander Challenge will be held as an open period of competition for flight attempts between July 1, 2009, and October 31, 2009.

LOCATION: The 2009 Lunar Lander Challenge attempts will be conducted at locations chosen by the competing teams.

FOR FURTHER INFORMATION: To register for and get additional information regarding the 2009 Lunar Lander Challenge including rules, team agreements, eligibility and prize criteria, visit the Web site at *http://space.xprize.org/ng-lunar-lander-challenge* or contact Mr. William Pomerantz, X Prize Foundation, 5510 Lincoln Blvd., Suite 100, Playa Vista, CA 90094, phone: 310.741.4910, e-mail: *will@xprize.org.* Questions and comments regarding the NASA Centennial Challenges Program should be addressed to Mr. Andrew Petro, NASA Headquarters, Washington, DC, *phone:* 202–358–0310 *e-mail: andrew.j.petro@nasa.gov.* The Centennial Challenges Web site is *http://www.ip.nasa.gov/cc.*

SUPPLEMENTARY INFORMATION: To qualify to win a prize in this challenge, a rocket-propelled vehicle with an assigned payload must take off vertically, climb to a defined altitude, fly for a pre-determined amount of time, then land vertically on a target that is a fixed distance from the take-off point. After remaining at this location for a period of time, the vehicle must take off, fly for the same amount of time, and land again on its original launch pad.

The remaining prize purse for this challenge is $1,650,000 distributed as follows: Level 2 1st prize: $1,000,000, Level 2 2nd prize: $500,000 and Level 1 2nd prize: $150,000. The Level 1 1st prize of $350,000 was awarded in 2008.

In the case of individuals, prizes can only be awarded to US citizens or permanent residents and in the case of corporations or other entities, prizes can only be awarded to those that are incorporated in and maintain a primary place of business in the United States.

Dated: May 14, 2009.

Douglas A. Comstock,

Director, Innovative Partnerships Program.

[FR Doc. E9–11921 Filed 5–26–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–71–EA; ASLBP No. 09–888–03–EA–BD01]

Detroit Edison Company; Corrected Notice of Establishment of Atomic Safety and Licensing Board

On May 15, 2009, the Atomic Safety and Licensing Board Panel issued a notice of Establishment of Atomic Safety and Licensing Board for Detroit Edison Company, Fermi Power Plant (Independent Spent Fuel Storage Installation), which incorrectly identified the docket number as 72–7–EA. The correct docket number is 72–71–EA. All other information given in the original Board Establishment Notice remains the same, and is repeated below.

Pursuant to delegation by the Commission dated December 29, 1972 (37 FR 28,710), and the Commission's regulations, *see* 10 CFR 2.106, 2.300, 2.313(a), and 2.318, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being

established to preside over the following proceeding: Detroit Edison Company, Fermi Power Plant, (Independent Spent Fuel Storage Installation).

This proceeding concerns a Petition to Intervene dated May 7, 2009 from Beyond Nuclear, *et al.*, that was submitted in response to an April 17, 2009 notice issued by the NRC Staff that provided the Issuance of Order for Implementation of Additional Security Measures and Fingerprinting for Unescorted Access to Detroit Edison Company (74 FR 17,890).

The Board is comprised of the following administrative judges:

Ronald M. Spritzer, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Randall J. Charbeneau, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

All correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing Rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 20th day of May 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–12279 Filed 5–26–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of May 25, June 1, 8, 15, 22, 29, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 25, 2009

Wednesday, May 27, 2009

9:30 a.m. Briefing on External Safety Culture (Public Meeting) (*Contact:* Stewart Magruder, 301–415–8730)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Wednesday, May 27, 2009

1:30 p.m. Briefing on Internal Safety Culture (Public Meeting) (*Contact:* June Cai, 301–415–5192)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 1, 2009—Tentative

Wednesday, June 3, 2009

9:30 a.m. Briefing on New Reactor Issues—Component Fabrication and Oversight—Part 1 (Public Meeting)

1:30 p.m. Briefing on New Reactor Issues—Component Fabrication and Oversight—Part 2 (Public Meeting) (Contact for both parts: Roger Rihm, 301–415–7807)

Both parts of this meeting will be webcast live at the Web address—*www.nrc.gov.*

Thursday, June 4, 2009

9:30 a.m. Briefing on Digital Instrumentation and Control (Public Meeting) (*Contact:* Steve Arndt, 301–415–6502)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

1:30 p.m. Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (*Contact:* Tanny Santos, 301–415–7270)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Week of June 8, 2009—Tentative

There are no meetings scheduled for the week of June 8, 2009.

Week of June 15, 2009—Tentative

There are no meetings scheduled for the week of June 15, 2009.

Week of June 22, 2009—Tentative

Thursday, June 25, 2009

1:30 p.m. Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (*Contact:* Ashley Cockerham, 240–888–7129)

This meeting will be webcast live at the Web address—*www.nrc.gov*.

Friday, June 26, 2009

9:30 a.m. Discussion of Security Issues (Closed—Ex. 3)

Week of June 29, 2009—Tentative

There are no meetings scheduled for the week of June 29, 2009.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

Additional Information

The Briefing on Fire Protection Closure Plan previously scheduled on Thursday, May 28, 2009, at 9:30 a.m. has been postponed.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: May 21, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–12373 Filed 5–22–09; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0142]

State of New Jersey: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of New Jersey

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of New Jersey.

SUMMARY: By letter dated October 16, 2008, Governor Jon S. Corzine of New Jersey requested that the U. S. Nuclear Regulatory Commission (NRC or Commission) enter into an Agreement with the State of New Jersey (State or New Jersey) as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act).

Under the proposed Agreement, the Commission would relinquish, and the State would assume, portions of the Commission's regulatory authority exercised within the State. As required

by the Act, the NRC is publishing the proposed Agreement for public comment. The NRC is also publishing the summary of an assessment by the NRC staff of the State's regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the State's program, and the State's program staff, as discussed in this notice.

The proposed Agreement would exempt persons who possess or use certain radioactive materials in the State from portions of the Commission's regulatory authority. The Act requires that the NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period ends June 26, 2009. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the comment period ends.

ADDRESSES: Written comments may be submitted to Mr. Michael T. Lesar, Chief, Rulemaking and Directives Branch, MS TWB–05–B01M, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Members of the public are invited and encouraged to submit comments electronically to *http://www.regulations.gov.* Search on Docket ID: [NRC–2009–0142] and follow the instructions for submitting comments.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents may be accessed through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff at (800) 397–4209, or (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Copies of comments received by NRC may be examined at the NRC Public Document Room, 11555 Rockville Pike, Public File Area O–1–F21, Rockville, Maryland. Copies of the request for an Agreement by the Governor of New Jersey including all information and documentation submitted in support of the request, and copies of the full text of the NRC Draft Staff Assessment are also available for public inspection in the NRC's Public Document Room-ADAMS Accession Numbers: ML090510713, ML090510708, ML090510709, ML090510710, ML090510711, ML090510712, ML090770116, and ML091400097.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–7900 or e-mail to *torre.taylor@nrc.gov.*

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 36 States. The Agreement States currently regulate approximately 19,000 Agreement material licenses, while the NRC regulates approximately 3,400 licenses. Under the proposed Agreement, approximately 500 NRC licenses will transfer to the State. The NRC periodically reviews the performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of that requirement.

I. Background

(a) Section 274b of the Act provides the mechanism for a State to assume regulatory authority from the NRC over certain radioactive materials and activities that involve use of the materials. The radioactive materials, sometimes referred to as ''Agreement materials,'' are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) byproduct materials as defined in Section 11e.(3) of the Act; (d) byproduct materials as defined in Section 11e.(4) of the Act; (e) source materials; and (f) special nuclear materials, restricted to quantities not sufficient to form a critical mass.

In a letter dated October 16, 2008, Governor Corzine certified that the State of New Jersey has a program for the control of radiation hazards that is adequate to protect public health and safety within New Jersey for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') that the State requests authority over are:

(1) The possession and use of byproduct materials as defined in section 11e.(1) of the Act;

(2) The possession and use of byproduct materials as defined in section 11e.(3) of the Act;

(3) The possession and use of byproduct materials as defined in section 11e.(4) of the Act;

(4) The possession and use of source materials;

(5) The possession and use of special nuclear materials in quantities not sufficient to form a critical mass; and

(6) The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

(b) The proposed Agreement contains articles that:

(i) Specify the materials and activities over which authority is transferred;

(ii) Specify the activities over which the Commission will retain regulatory authority;

(iii) Continue the authority of the Commission to safeguard nuclear materials and restricted data;

(iv) Commit the State and NRC to exchange information as necessary to maintain coordinated and compatible programs;

(v) Provide for the reciprocal recognition of licenses;

(vi) Provide for the suspension or termination of the Agreement; and

(vii) Specify the effective date of the proposed Agreement.

The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission and signed by the NRC Chairman and the Governor of New Jersey.

(c) The regulatory program is authorized by law under the New Jersey Statute N.J.S.A. 26:2D–1, the Radiation Protection Act, which provides the Governor with the authority to enter into an Agreement with the Commission. New Jersey law contains provisions for the orderly transfer of regulatory authority over affected licensees from the NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as State licenses until the licenses expire or are replaced by State-issued licenses.

The State currently regulates the users of naturally occurring and accelerator-produced radioactive materials (NARM). The Energy Policy Act of 2005 (EPAct) expanded the Commission's regulatory authority over byproduct materials as defined in Sections 11e.(3) and 11e.(4) of the Act, to include certain naturally occurring and accelerator-produced radioactive materials. On August 31, 2005, the Commission issued a time-limited waiver (70 FR 51581) of the EPAct requirements, which is effective through August 7, 2009. A plan to facilitate an orderly transition of regulatory authority with respect to byproduct material as defined in Sections 11e.(3) and 11e.(4) was noticed in the **Federal Register** on October 19, 2007 (72 FR 59158). Under the proposed Agreement, the State would assume regulatory authority for these radioactive materials. The State has proposed an effective date for the Agreement of no later than September 30, 2009. If the proposed Agreement is approved before August 7, 2009, the Commission would terminate the time-limited waiver in the State coincident with the effective date of the Agreement. However, if the Agreement is not approved prior to this date, NRC would have jurisdictional authority over all uses of byproduct material within the State. These licensees would have to meet NRC regulatory requirements and would have 6 months to apply for any necessary amendments to an NRC license they already possess, or 12 months to apply for a new NRC license, if needed.

With the effective date of the New Jersey Agreement having the potential to occur after the expiration of the time-limited waiver, staff is working to ensure an efficient transition of NARM licensees in New Jersey within the legal requirements. The staff's objective is to minimize the impact to NARM licensees in New Jersey during the transition to NRC and then back to New Jersey's regulatory authority, within a short timeframe (*i.e.*, about 7 weeks).

(d) The NRC draft staff assessment finds that the New Jersey Department of Environmental Protection (NJDEP), Bureau of Environmental Radiation (BER), is adequate to protect public health and safety and is compatible with the NRC program for the regulation of Agreement materials.

II. Summary of the NRC Staff Assessment of the State's Program for the Control of Agreement Materials

The NRC staff has examined the State's request for an Agreement with respect to the ability of the radiation control program to regulate Agreement materials. The examination was based on the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' (46 FR 7540; January 23, 1981, as amended by Policy Statements published at 46 FR 36969; July 16, 1981 and at 48 FR 33376; July 21, 1983), and the Office of Federal and State Materials and Environmental Management Programs (FSME) Procedure SA–700, ''Processing an Agreement'' (available at *http://nrc-stp.ornl.gov/procedures/sa700.pdf* and *http://nrc-stp.ornl.gov/procedures/sa700_hb.pdf*).

(a) Organization and Personnel. The Agreement materials program will be located within the existing BER of the NJDEP. The BER will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the BER staff members are specified in the State's personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold a bachelor of science degree in physical or life sciences, with many staff holding a master of science degree in radiation science. All have had training and work experience in radiation protection. Supervisory level staff has at least 5 years of working experience in radiation protection, with most having greater than 10 years of experience.

The State performed an analysis of the expected workload under the proposed Agreement. Based on the NRC staff review of the State's staff analysis, the State has an adequate number of staff to regulate radioactive materials under the terms of the Agreement. The State will employ a staff with the equivalent of 13.25 full-time professional/technical and administrative employees for the Agreement materials program.

The State has indicated that the BER has an adequate number of trained and qualified staff in place. The State has developed qualification procedures for license reviewers and inspectors which are similar to the NRC's procedures. The technical staff is accompanying NRC staff on inspections of NRC licensees in New Jersey. BER staff is also actively supplementing their experience through direct meetings, discussions, and facility visits with NRC licensees in the State, and through self-study, in-house training, and formal training.

Overall, the NRC staff concluded that the BER technical staff identified by the State to participate in the Agreement materials program has sufficient knowledge and experience in radiation protection, the use of radioactive materials, the standards for the evaluation of applications for licensing, and the techniques of inspecting licensed users of Agreement materials.

(b) Legislation and Regulations. In conjunction with the rulemaking authority vested in the New Jersey Commission on Radiation Protection (N.J.S.A. 26:2D–7), the BER has the requisite authority to promulgate regulations for protection against radiation. The law provides BER the authority to issue licenses and orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors.

The NRC staff verified that the State adopted the relevant NRC regulations in 10 CFR Parts 19, 20, 30, 31, 32, 33, 34, 35, 36, 39, 40, 61, 70, 71, and 150 into New Jersey Administrative Code, Title 7, Chapter 28. The NRC staff also approved two license conditions to implement Increased Controls and Fingerprinting and Criminal History Records Check requirements for risk-significant radioactive materials for certain State licensees under the proposed Agreement. These license conditions will replace the Orders that NRC issued (EA–05–090 and EA–07–305) to these licensees that will transfer to the State. Therefore, on the proposed effective date of the Agreement, the State will have adopted an adequate and compatible set of radiation protection regulations that apply to byproduct, source, and special nuclear materials in quantities not sufficient to form a critical mass. The NRC staff also verified that the State will not attempt to enforce regulatory matters reserved to the Commission.

(c) Storage and Disposal. The State has adopted NRC compatible requirements for the handling and storage of radioactive material. The State is requesting authority to regulate the land disposal of byproduct, source, and special nuclear waste materials received from other persons. The State waste disposal requirements cover the preparation, classification, and manifesting of radioactive waste generated by State licensees for transfer for disposal to an authorized waste disposal site or broker. The State has adopted the regulations for a land disposal site but does not expect to need to implement them in the near future since the State is a member of the Atlantic Compact and has access to the waste disposal site, EnergySolutions Barnwell Operations, located in Barnwell, South Carolina.

(d) Transportation of Radioactive Material. The State has adopted

compatible regulations to the NRC regulations in 10 CFR Part 71. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. The State will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. The State has adopted compatible regulations to the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving Agreement materials.

(f) Evaluation of License Applications. The State has adopted compatible regulations to the NRC regulations that specify the requirements a person must meet to get a license to possess or use radioactive materials. The State has also developed a licensing procedure manual, along with accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The State has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by the NRC. The BER has adopted procedures for the conduct of inspections, reporting of inspection findings, and reporting inspection results to the licensees. The State has also adopted procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The State is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The State has also adopted administrative procedures to assure fair and impartial treatment of license applicants. State law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. State laws provide for the recognition of existing NRC and Agreement State licenses. New Jersey has a process in place for the transition of active NRC licenses. Upon completion of the Agreement, all active NRC licenses issued to facilities in New Jersey will be recognized as NJDEP licenses. New Jersey will issue a brief licensing document that will include licensee specific information, as well as an expiration date, with a license condition that authorizes receipt, acquisition, possession, and transfer of byproduct, source, and/or special nuclear material; the authorized use(s); purposes; and the places of use as designated on the NRC license. The license condition will also commit the licensee to conduct its program in accordance with the NRC license and commitments. The NJDEP rules will govern unless the statements, representations and procedures in the licensee's application and correspondence are more restrictive than the NJDEP rules. NJDEP will then issue full NJDEP licenses, over approximately 13 months.

The State also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. New Jersey regulations, in N.J.A.C. 28:51.1, provide exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors. The proposed Agreement commits the State to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation, and to assure that the State's program will continue to be compatible with the Commission's program for the regulation of Agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and the State to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Section 274d of the Act provides that the Commission shall enter into an Agreement under Section 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the Agreement materials within the State, and that the State desires to assume regulatory responsibility for the Agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

The NRC staff has reviewed the proposed Agreement, the certification by the State of New Jersey in the application for an Agreement submitted by Governor Corzine on October 16, 2008, and the supporting information provided by NJDEP, BER, and concludes that the State of New Jersey satisfies the criteria in the Commission's policy statement ''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement,'' and meets the requirements of Section 274 of the Act. Therefore, the proposed State of New Jersey program to regulate Agreement materials, as comprised of statutes, regulations, procedures, and staffing is compatible with the program of the Commission and is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

Dated at Rockville, Maryland, this 20th day of May 2009.

For the Nuclear Regulatory Commission.

Terrence Reis,

Deputy Director, National Materials Program Directorate, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

APPENDIX A

An Agreement Between the United States Nuclear Regulatory Commission and the State of New Jersey for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (hereinafter referred to as the Act), to enter into Agreements with the Governor of any State/Commonwealth providing for discontinuance of the regulatory authority of the Commission within the State/Commonwealth under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1), (2), (3), and (4) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of New Jersey is authorized under The Radiation Protection Act, N.J.S.A. 26:2D–1, to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of New Jersey certified on October 16, 2008, that the State of New Jersey (the State) has a program for the control of radiation hazards adequate to protect public health and safety with respect to the materials within the State covered by this Agreement and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on [date] that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of the reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Act;

Now, therefore, It is hereby agreed between the Commission and the Governor of the State acting on behalf of the State as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(3) of the Act;
3. Byproduct materials as defined in Section 11e.(4) of the Act;
4. Source materials;
5. Special nuclear materials in quantities not sufficient to form a critical mass;
6. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons.

Article II

This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;
2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;
3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear materials waste as defined in the regulations or orders of the Commission;
4. The regulation of the disposal of such other byproduct, source, or special nuclear materials waste as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be disposed without a license from the Commission;
5. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission;
6. The regulation of byproduct material as defined in Section 11e.(2) of the Act.

Article III

With the exception of those activities identified in Article II, paragraphs 1 through 4, this Agreement may be amended, upon application by the State and approval by the Commission, to include one or more of the additional activities specified in Article II, whereby the State may then exert regulatory authority and responsibility with respect to those activities.

Article IV

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article V

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data, or to guard against the loss or diversion of special nuclear material.

Article VI

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that Commission and State programs for protection against hazards of radiation will be coordinated and compatible.

The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VII

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State.

Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VIII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act.

The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgment of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article IX

This Agreement shall become effective on [date], and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

For the United States Nuclear Regulatory Commission.

Gregory B. Jaczko,
Chairman.

For the State of New Jersey.

Jon S. Corzine,
Governor.

[FR Doc. E9–12260 Filed 5–26–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03035282; License No. 37–30546–01; EA–08–018, 08–019, 08–020; NRC–2009–0216]

In the Matter of Precision Calibration & Testing Corporation, York, PA; Order Imposing Civil Monetary Penalty

I

In 2007, Precision Calibration & Testing Corporation (PCT), was the holder of a radiography License No. 37–30545–01, issued by the Nuclear Regulatory Commission (NRC) on September 7, 2006. The License authorized possession and storage of radioactive material only in accordance with the conditions specified therein.

II

During two NRC inspections conducted from March 23 to August 24, 2007, and two investigations initiated on June 13 and August 23, 2007, both

of which were completed on November 29, 2007, violations of NRC requirements were identified. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated July 9, 2008. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated August 18, 2008. In its response, the Licensee disputed the willful aspects of the violations and requested mitigation of the associated civil penalty. The results of the NRC review of the Licensee's letter is described in the Appendix to this Order. Further, the basis of this Order is set forth in the Appendix to this Order.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, as well as information gathered by the Office of Investigations in assistance to the staff (completed on February 20, 2009), the NRC staff determined, as set forth in the Appendix to this Order, the following: (1) The violations occurred as stated, with the exception that an example of the failure to meet the requirements of 10 CFR 30.9 was not willful; and, (2) the amount of the proposed penalty is reduced to result in a civil penalty in the amount of $3,250 that is imposed by Order.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *it is hereby ordered that:*

The Licensee, within 30 days of the date of this Order shall either (1) pay a civil penalty in the amount of $3,250, in accordance with NUREG/BR–0254; or (2) contact the NRC Office of the Chief Financial Officer to arrange payment in installments over an established time period. In addition, at the time payment is made, the licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person adversely affected by this Order may, submit an answer to this Order within 30 days of its issuance. In addition, the Licensee and any other person adversely affected by this Order may request a hearing on this Order within 30 days of its issuance. Where good cause is shown, consideration will be given to extending the time to answer or request a hearing. A request for extension of time must be directed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, and include a statement of good cause for the extension.

If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.309(d).

If a hearing is requested by a Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearings. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained. Pursuant to 10 CFR 2.202(c)(2)(i), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error. In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 30 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this Order. If payment has not been made by that time, the matter may be referred to the Attorney General, for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

(a) Whether the Licensee is in violation of the Commission's requirements as set forth in the Notice of Violation referenced in Section II above, and as set forth in the Appendix to this Order; and,

(b) Whether, on the basis of such violations and the additional violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

A request for a hearing must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August, 2007, 72 FR 49,139 (Aug. 28, 2007). The E-Filing process requires participants to submit and serve documents over the Internet or, in some cases, to mail copies on electronic optical storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least five (5) days prior to the filing deadline the requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (866) 672–7640, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate also is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for a hearing through EIE. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those

participants separately. Therefore, any others who wish to participate in the proceeding (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MHSD.Resource@nrc.gov.*

Participants who believe that they have good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by (1) first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their works.

Dated this 19th day of May 2009.

For the Nuclear Regulatory Commission.

Cynthia Carpenter,

Director, Office of Enforcement.

[FR Doc. E9–12254 Filed 5–26–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before July 27, 2009.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Administrative Officer, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, 6th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Administrative Officer, Office of Disaster Assistance, 202–205–7570, *cynthia.pitts@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION: This form is used to determine application for benefits (loan) used to determine eligibility and creditworthiness of victims who seek Federal assistance to implement pre-disaster mitigation efforts.

Title: ''Pre-Disaster Mitigation Loan Application.''

Description of Respondents: Small Business Lending Companies.

Form Number: 5M.

Annual Responses: 5,000.

Annual Burden: 32.

Supplementary Information

SBA Form 700 provides a record of interviews for disaster assistance from SBA or administratively declared disasters, and for some victims in Presidential declared disasters.

Title: ''Disaster Home/Business Loan Iniquity Record.''

Description of Respondents: Disaster Victims.

Form Number: 700.

Annual Responses: 3,261.

Annual Burden: 815.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Bryan Hooper, Director, Office of Lender Oversight, Small Business Administration, 409 3rd Street, 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Bryan Hooper, Director, Office of Lender Oversight, 202–205–3049, *bryan.hooper@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

Supplementary Information

The information collected through these forms from the small business applications and participating lenders will be used to determine eligibility and to properly evaluate the merits of each loan request based on each criteria as character, capacity, credit collateral, etc. for the purpose of extending credit under the 7(a) loan program.

Title: ''Lender Advantage.''

Description of Respondents: 7(a) Lenders.

Form Number's: 2301, A, B, C.

Annual Responses: 4,000.

Annual Burden: 20,000.

Addresses: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda Roberts, Director, Office of Security Operations, Small Business Administration, 409 3rd Street, 5th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Linda Roberts, Director, Office of Security Operations, 202–205–6223, *linda.roberts@sba.gov,* Curtis B. Rich, Management Analyst, 202–205–7030, *curtis.rich@sba.gov.*

Supplementary Information

The form is used to collect information needed to make character determinations with respect to applicant for monetary loan assistance or applicants for participation in SBA programs. The information collected is used to conduct name checks looking for criminal records at the national (FBI) and local levels.

Title: ''Statement of Personal History.''

Description of Respondents: Applicants for SBA Financial Assistance or other programs.

Form Number: 912.

Annual Responses: 142,000.

Annual Burden: 35,500.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. E9–12273 Filed 5–26–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11707 and #11708]

North Dakota Disaster Number ND–00016

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of North Dakota (FEMA–1829–DR), dated 04/10/2009.

Incident: Severe Storms and Flooding.

Incident Period: 03/13/2009 and continuing.

DATES: Effective Date: 05/18/2009.

Physical Loan Application Deadline Date: 08/10/2009.

EIDL Loan Application Deadline Date: 01/11/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of North Dakota, dated 04/10/2009 is hereby amended to extend the deadline for filing applications for physical damages as a result of this disaster to 08/10/2009.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Roger B. Garland,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–12266 Filed 5–26–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 28726; File No. 812–13649]

Main Street Capital Corporation, et al.; Notice of Application

May 19, 2009.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 23(c)(3) of the Investment Company Act of 1940 (the ''Act'') for an exemption from section 23(c) of the Act.

SUMMARY OF THE APPLICATION: Applicants, Main Street Capital Corporation (the ''Company''), Main Street Mezzanine Fund, LP (''MSMF''), Main Street Capital Partners, LLC (the ''Adviser'') and Main Street Mezzanine Management, LLC (the ''GP''), request an order to amend a prior order (the ''Prior Order'') that permits the Company to issue restricted shares of its common stock (''Restricted Stock'') under the terms of its employee and director compensation plan, the Main Street Capital Corporation 2008 Equity Incentive Plan (the ''Plan'').[1] Applicants seek to amend the Prior Order in order to permit the Company, pursuant to the Plan, to engage in certain transactions that may constitute purchases by the Company of its own securities within the meaning of section 23(c) of the Act.

Filing Dates: The application was filed on April 3, 2009 and amended on May 13, 2009 and May 18, 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 applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 15, 2009, and should be accompanied by proof of service on applicant, 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, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. Applicants, c/o Jason B. Beauvais, General Counsel, Main Street Capital Corporation, 1300 Post Oak Boulevard, Suite 800, Houston, TX 77056.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or Janet M. Grossnickle, Assistant Director, 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. The Company is an internally managed, non-diversified, closed-end investment company that has elected to be regulated as a business development company (''BDC'') under the Act. The Company is currently permitted to issue shares of Restricted Stock under the terms of its Plan in reliance on the Prior Order. Applicants seek to amend the Prior Order in order to permit the Company, pursuant to the Plan, to withhold shares of the Company's common stock or purchase shares of the Company's common stock from executive officers or employees (''Participants'') to satisfy tax withholding obligations related to the vesting of Restricted Stock or the exercise of stock options that were or will be granted pursuant to the Plan. In addition, the Company seeks to amend the Prior Order to permit Participants to pay the exercise price of options that were or will be granted to them pursuant to the Plan with shares of the Company's common stock already held by them or pursuant to a net share settlement feature.[2] The Applicants will continue to comply with all of the terms and conditions of the Prior Order.

2. The Plan authorizes the issuance to Participants of shares of Restricted Stock and options to purchase shares of the Company's common stock, subject to certain forfeiture restrictions. On the date Restricted Stock vests, shares of the Restricted Stock are released to the Participant and are available for sale or

[1] Main Street Capital Corporation, et al., Investment Company Act Release Nos. 28082 (Dec. 21, 2007) (notice) and 28120 (Jan 16, 2008) (order). MSMF, the GP and the Adviser are each, directly or indirectly, wholly owned by the Company.

[2] Net share settlement allows the Company to deliver only gain shares (*i.e.,* shares of its common stock with a fair market value, as the term is defined in the Plan, equal to the option spread upon exercise) directly to the optionee without the need for the optionee to sell shares of the Company's common stock on the open market or borrow cash from third parties in order to exercise his or her options.

transfer and the value of the vesting shares is deemed to be compensation for a Participant.[3] As discussed more fully in the application, certain exercises of options result in a Participant being deemed to have received compensation in the amount by which the fair market value of the shares of the Company's common stock, determined as of the date of exercise, exceeds the exercise price. Applicants state that any compensation income recognized by a Participant generally is subject to federal withholding for income and employment tax purposes. Accordingly, arrangements must be made to satisfy the necessary withholding tax obligations.

3. The Company's stockholders approved the terms and provisions of the Plan on June 17, 2008. The Plan explicitly permits the Company to withhold shares of the Company's common stock or purchase shares of the Company's common stock from the Participants to satisfy tax withholding obligations related to the vesting of Restricted Stock or the exercise of options granted pursuant to the Plan. The Plan further provides that Participants may pay the exercise price of options to purchase shares of the Company's stock with shares of the Company's stock already held by such Participants or pursuant to net share settlement.

Applicants' Legal Analysis

1. Section 23(c) of the Act, which is made applicable to BDCs by section 63 of the Act, generally prohibits a BDC from purchasing any securities of which it is the issuer except in the open market, pursuant to tender offers or under other circumstances as the Commission may permit to ensure that the purchase is made on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicants state that the withholding or purchase of shares of Restricted Stock and common stock in payment of applicable withholding tax obligations or of common stock in payment for the exercise price of a stock option might be deemed to be purchases by the Company of its own securities within the meaning of section 23(c) and therefore prohibited by the Act.

2. Section 23(c)(3) provides that the Commission may issue an order that would permit a BDC to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis that does not unfairly discriminate against any holders of the class or classes of securities to be purchased. Applicants believe that the requested relief meets the standards of section 23(c)(3).

3. Applicants state that these purchases will be made on a basis which does not unfairly discriminate against the stockholders of the Company because all purchases of the Company's stock will be at the closing price of the common stock on the NASDAQ Global Select Market (or any primary exchange on which the shares are traded) on the relevant date (*i.e.,* the public market price on the date the Restricted Stock vests or the date of the exercise of any options). Applicants further state that no transactions will be conducted pursuant to the requested order on days where there are no reported market transactions involving the Company's shares. Applicants submit that because all transactions would take place at the public market price for the Company's common stock, the transactions would not be significantly different than could be achieved by any stockholder selling in a market transaction.

4. Applicants submit that the proposed purchases do not raise concerns about preferential treatment of the Company's insiders because the Plan is a bona fide compensation plan of the type that is common among corporations generally. Further, the vesting schedule is determined at the time of the initial grant of the Restricted Stock while the option exercise price is determined at the time of the initial grant of the options. Applicants represent that all purchases will be made only as permitted by the Plan, which was approved by the Company's stockholders. Applicants argue that granting the requested relief would be consistent with precedent and the Commission's recognition of the important role that equity compensation can play in attracting and retaining qualified personnel with respect to certain types of investment companies, including BDCs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12219 Filed 5–26–09; 8:45 am]

BILLING CODE 8010–01–P

[3] During the restriction period (*i.e.,* prior to the lapse of the forfeiture restrictions), the Restricted Stock may not be sold, transferred, hypothecated, margined, or otherwise encumbered by the Participant.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59937; File No. SR–NYSEArca–2009–24]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Adopt a Policy With Respect to the Treatment of Aberrant Trades

May 18, 2009.

I. Introduction

On March 18, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b-4 thereunder,[2] a proposed rule change to adopt a policy relating to its treatment of trade reports that it determines to be inconsistent with the prevailing market and to make such policy retroactive to January 1, 2008. The proposed rule change was published for comment in the **Federal Register** on April 6, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Trades in listed securities occasionally occur at prices that deviate from prevailing market prices and those trades sometimes establish a high, low or last sale price for a security that does not reflect the true market for the security. The Exchange seeks to address such instances of ''aberrant'' trades by adopting a policy that is substantially similar to a policy of the New York Stock Exchange (''NYSE'').[4] On February 9, 2009, the Exchange also filed a proposed rule change, which it designated as eligible for immediate effectiveness pursuant to Rule 19b–4(f)(6) under the Act,[5] to adopt a policy relating to the Exchange's treatment of trade reports that it determines to be inconsistent with the prevailing market.[6] The policy proposed in the instant rule change is identical to the policy set forth in Release No. 34–59453, except that the instant proposal

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 59650 (March 30, 2009), 74 FR 15545.

[4] *See* Securities Exchange Act Release No. 59064 (December 5, 2008), 73 FR 76082 (December 15, 2008) (order approving SR–NYSE–2008–91) (''Release No. 34–59064'').

[5] 17 CFR 240.19b–4(f)(6).

[6] *See* Securities Exchange Act Release No. 59453 (February 25, 2009), 74 FR 9463 (March 4, 2009) (SR–NYSEArca–2009–09) (''Release No. 34–59453'').

is retroactive to January 1, 2008. This retroactive application is similar to the retroactivity provision in the NYSE policy set forth in Release No. 34–59064.

The Consolidated Tape Association (''CTA'') offers each Participant in the CTA Plan the discretion to append an indicator (an ''Aberrant Report Indicator'') to a trade report to indicate that the market believes that the trade price in a trade executed on that market does not accurately reflect the prevailing market for the security. The CTA recommends that data recipients should exclude the price of any trade to which the Aberrant Report Indicator has been appended from any calculation of the high, low and last sale prices for the security.

During the course of surveillance by the Exchange or as a result of notification by another market, listed company or market participant, the Exchange may become aware of trade prices that do not accurately reflect the prevailing market for a security. In such a case, the Exchange proposes to adopt as policies that it:

i. May determine to append an Aberrant Report Indicator to any trade report with respect to any trade executed on the Exchange that the Exchange determines to be inconsistent with the prevailing market; and

ii. Shall discourage vendors and other data recipients from using prices to which the Exchange has appended the Aberrant Report Indicator in any calculation of the high, low or last sale price of a security.

The Exchange believes that retroactive application of its aberrant trade policy is warranted because of the significant market volatility and trade reporting issues that all market centers experienced during 2008. Therefore, the Exchange believes that it should be permitted to act retroactively to append the Aberrant Report Indicator to trades that do not accurately reflect the prevailing market for a security commencing as of January 1, 2008.

The Exchange will urge vendors to disclose the exclusion from high, low or last sale price data of any aberrant trades excluded from high, low or last sale price information they disseminate and to provide to data users an explanation of the parameters used in the Exchange's aberrant trade policy. Upon initial adoption of the Aberrant Report Indicator, the Exchange will also contact all of its listed companies to explain the aberrant trade policy and will notify users of the information that these are still valid trades. The Exchange will inform the affected listed company each time the Exchange or another market appends the Aberrant Report Indicator to a trade in an NYSE Arca listed stock and will remind the users of the information that these are still valid trades in that they were executed and not unwound as in the case of a clearly erroneous trade.

While the CTA disseminates its own calculations of high, low and last sale prices, vendors and other data recipients—and not the Exchange—frequently determine their own methodology by which they wish to calculate high, low and last sale prices. Therefore, the Exchange shall endeavor to explain to those vendors and other data recipients the deleterious effects that can result from including in the calculations a trade to which the Aberrant Report Indicator has been appended.

In making the determination to append the Aberrant Report Indicator, the Exchange shall consider all factors related to a trade, including, but not limited to, the following:

- Material news released for the security;
- Suspicious trading activity;
- System malfunctions or disruptions;
- Locked or crossed markets;
- A recent trading halt or resumption of trading in the security;
- Whether the security is in its initial public offering;
- Volume and volatility for the security;
- Whether the trade price represents a 52-week high or low for the security;
- Whether the trade price deviates significantly from recent trading patterns in the security;
- Whether the trade price reflects a stock-split, reorganization or other corporate action;
- The validity of consolidated tape trades and quotes in comparison to national best bids and offers; and
- The general volatility of market conditions.

In addition, the Exchange proposes that its policy shall be to consult with the listing exchange (if the Exchange is not the listing exchange) and with other markets (in the case of executions that take place across multiple markets) and to seek a consensus as to whether the trade price is consistent with the prevailing market for the security.

In determining whether trade prices are inconsistent with the prevailing market, the Exchange proposes that its policy shall be to follow the following general guidelines: The Exchange will determine whether a trade price does not reflect the prevailing market for a security if the trade occurs during regular trading hours (*i.e.,* 9:30 a.m. to 4 p.m.) and occurs at a price that deviates from the ''Reference Price'' by an amount that meets or exceeds the following thresholds:

Trade price	Numerical threshold (percent)
Between $0 and $15.00	7
Between $15.01 and $50.00	5
In excess of $50.00	3

The ''Reference Price'' refers to (a) if the primary market for the security is open at the time of the trade, the national best bid or offer for the security, or (b) if the primary market for the security is not open at the time of the trade, the first executable quote or print for the security on the primary market after execution of the trade in question. However, if the circumstances suggest that a different Reference Price would be more appropriate, the Exchange will use the different Reference Price. For instance, if the national best bid and offer for the security are so wide apart as to fail to reflect the market for the security, the Exchange might use as the Reference Price a trade price or best bid or offer that was available prior to the trade in question.

If the Exchange determines that a trade price does not reflect the prevailing market for a security and the trade represented the last sale of the security on the Exchange during a trading session, the Exchange may also determine to remove that trade's designation as the last sale. The Exchange may do so either on the day of the trade or at a later date, so as to provide reasonable time for the Exchange to conduct due diligence regarding the trade, including the consideration of input from markets and other market participants.

The Exchange advises that it proposes to use the Aberrant Report Indicator in accordance with the guidelines set forth above and that it may apply the Aberrant Report Indicator on a retroactive basis commencing January 1, 2008.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act[7] and the rules and regulations thereunder. Specifically, the Commission finds that the proposed rule change is consistent

[7] 15 U.S.C. 78f(b).

with Section 6(b)(5) of the Act[8] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.[9]

The Commission believes that the Exchange's proposal to append an Aberrant Report Indicator to certain trade reports is a reasonable means to alert investors and others that the Exchange believes that the trade price for a trade executed in its market does not accurately reflect the prevailing market for the security. In addition, the Commission notes that the Exchange will use objective numerical thresholds in determining whether a trade report is eligible to have an Aberrant Trade Indicator appended to it. The Commission further notes that the Exchange's appending the Aberrant Trade Indicator to a trade report has no effect on the validity of the underlying trade. The Commission previously found a similar proposal by the NYSE to be consistent with the Act.[10] Finally, the Commission notes that the retroactive application of this proposal to January 1, 2008 is similar to the retroactive period approved for the NYSE.[11]

For the reasons set forth above, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSEArca-2009–24) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12215 Filed 5–26–09; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] *See supra* note 4.

[11] *Id.*

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 59947; File No. SR–FINRA–2009–017]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change To Adopt Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA Rule in the Consolidated FINRA Rulebook

May 20, 2009.

I. Introduction

On March 26, 2009, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')), filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Incorporated NYSE Rule 406 (Designation of Accounts) as a FINRA rule in the consolidated FINRA rulebook (''Consolidated FINRA Rulebook'')[3] with the minor changes discussed below. The proposed rule change was published in the **Federal Register** on April 16, 2009.[4] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

As part of the process of developing the Consolidated FINRA Rulebook,[5] FINRA proposed to adopt Incorporated NYSE Rule 406, with minor changes, as renumbered FINRA Rule 3250 in the Consolidated FINRA Rulebook. Incorporated NYSE Rule 406 provides that no member organization shall carry an account on its books in the name of a person other than that of the customer, except that an account may be designated by a number or symbol, provided that the member has on file a written statement signed by the customer attesting to the ownership of such account. In effect, this rule establishes a general requirement that a member must hold each customer account in the customer's name, except that a member may identify a customer's account with a number or symbol, as long as the member maintains documentation identifying the customer.[6] Currently, Incorporated NYSE Rule 406 applies only to Dual Members.

NYSE's enforcement of the rule has addressed, among other things, sales practice abuses such as co-mingling of funds, the failure to disclose ownership interests in accounts and unauthorized trading.[7] In the notice, FINRA proposed to adopt Incorporated NYSE Rule 406 as FINRA Rule 3250, stating it believes that the rule will continue to be an important enforcement tool and should be expanded to apply to the entire FINRA membership. In the notice, FINRA stated that Incorporated NYSE Rule 406 could provide members' customers with a level of anonymity within the member and with certain external relationships that they find useful, while still allowing customers' identities to be clearly known to members and available to regulators. In the proposal, FINRA indicated that Incorporated NYSE Rule 406 would be renumbered as FINRA Rule 3250 with minor changes to replace references to ''member organization'' or ''organization'' with the term ''member.''[8]

III. Discussion and Findings

After careful review of the proposal, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities associations,[9] and in particular, with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The current FINRA rulebook consists of two sets of rules: (1) NASD Rules and (2) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together referred to as the ''Transitional Rulebook''). The Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). Dual members must also comply with NASD Rules. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (''Rulebook Consolidation Process'').

[4] *See* Exchange Act Release No. 59745 (April 10, 2009), 74 FR 17705 (April 16, 2009) (''notice'' or ''proposal'').

[5] *See supra* note 3.

[6] Members are subject to additional requirements regarding customer accounts. *See, e.g.,* Rule 17a–3(a)(9) under the Act (requiring records indicating the name and address of the beneficial owner of each cash and margin customer account). 17 CFR 240.17a–3(a)(9).

[7] *See, e.g.,* Robert S. Bartek, Exchange Hearing Panel Decision 73–60 (August 28, 1973); Jeffrey Alan Schultz, Exchange Hearing Panel Decision 82–23 (March 18, 1982); Kery Shane Hutner, Exchange Hearing Panel Decision 02–27 (January 31, 2002). *See also* NYSE *Information Memo* 78–80, Members' Accounts and Initiating Orders on the NYSE Floor (November 10, 1978) (addressing, among other things, NYSE Rule 406(1), now Rule 406).

[8] FINRA also stated that it will announce the implementation date of the proposed rule change in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on

Continued

Section 15A(b)(6) of the Act,[10] which requires, among other things, that FINRA's rules be designed to prevent fraudulent and manipulative practices, to promote just and equitable principles of trade, and in general, to protect investors and the public interest. FINRA's adoption of Incorporated NYSE Rule 406 as FINRA Rule 3250 in the Consolidated FINRA Rulebook, with the minor changes discussed above, will extend to all FINRA members the applicability of a rule that serves as an important tool to guard against behavior that may be manipulative and fraudulent and that may violate just and equitable principles of trade.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–FINRA–2009–017) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12218 Filed 5–26–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59944; File No. SR–NYSEArca–2009–44]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Amending Rule 6.72 Governing Trading Differentials and Proposing To Expand the Penny Pilot

May 20, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on May 15, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its option trading rules to (i) extend the Penny Pilot in options classes in certain issues (''Pilot Program'') previously approved by the Securities and Exchange Commission (''Commission'') through December 31, 2010, (ii) provide for additional classes to quote and trade all contracts in one cent ($0.01) increments, and (iii) expand the number of issues included in the Pilot. The text of the proposed rule change is attached as Exhibit 5.[4] A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to extend the time period of the Pilot Program[5] which is currently scheduled to expire on July 3, 2009, through December 31, 2010.

Top 300

The Exchange also proposes to expand the number of issues included in the Pilot Program. Specifically, NYSE Arca proposes to add the top 300 most actively traded multiply listed options classes that are not yet included in the Pilot Program (''Top 300''). The Exchange proposes to determine the identity of the Top 300 based on national average daily volume in the prior six calendar months immediately preceding their addition to the Pilot Program.[6] In determining the identity of the Top 300, the Exchange will exclude options classes with high premiums. Pursuant to Commentary .02 to NYSE Arca Rule 6.72, the Pilot Program issues will be announced to the Exchange's membership via Regulatory Bulletin and published by the Exchange on its website.[7] This will bring the total number of options classes traded pursuant to the Pilot Program to 363. NYSE Arca represents that the Exchange has the necessary system capacity to support any additional series listed as part of the Pilot Program.

Phased Implementation

The Exchange proposes to phase-in the additional classes to the Pilot Program over four successive quarters. Specifically, the Exchange proposes to add 75 classes in July 2009, October 2009, January 2010, and April 2010. In order to reduce operational confusion and provide for appropriate time to update databases, the Exchange proposes to add the eligible issues to the Pilot Program effective for trading on the Monday ten days after Expiration Friday. Thus, the quarterly additions would be effective on July 27, 2009; October 26, 2009; January 25, 2010; and April 26, 2010.[8]

Exchange Designations

The Exchange further proposes to designate two Pilot Program issues as eligible to quote and trade all options contracts in one cent increments, regardless of premium value. Specifically, the Exchange proposes to so designate SPY (SPDR S&P 500 ETF) and IWM (iShares Russell 2000 Index Fund). In selecting these issues, the Exchange considered, among other things, that these symbols are (a) among the most actively traded issues nationally, with a wide array of investor

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efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78*o*–3(b)(6).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19–4.

[4] The Commission notes that while provided in Exhibit 5 to the filing, the text of the proposed rule change is not attached to this notice, but is available at the Commission's Public Reference Room and at *http://www.nyse.com.*

[5] *See* Securities Exchange Act Release No. 34–55156 (January 23, 2007), 72 FR 4759 (February 21, 2007); Securities Exchange Act Release No. 34–56568 (September 27, 2007), 72 FR 56422 (October 3, 2007); Securities Exchange Act Release No.34–59628 (March 26, 2009), 74 FR 15025 (April 2, 2009).

[6] The Exchange will not include options classes in which the issuer of the underlying security is subject to an announced merger or is in the process of being acquired by another company, or if the issuer is in bankruptcy. For purposes of assessing national average daily volume, the Exchange will use data compiled and disseminated by the Options Clearing Corporation.

[7] The Exchange shall also identify the classes to be added to the Pilot Program, per each phase, in a filing with the Commission.

[8] For purposes of identifying the issues to be added per quarter, the Exchange shall use data from the prior six calendar months immediately preceding the implementation month. For example, the quarterly additions to be added on July 27, 2009 shall be determined using data from the sixth month period ending June 30, 2009.

interest, (b) have more series trading at a premium between $3 and $10, and (c) are trading at prices that are neither extremely low nor high, but are generally trading between $15–$50. The Exchange believes that issues that meet these criteria benefit the most from the ability to quote and trade all options in penny increments.

Delistings

Additionally, the Exchange proposes that any Pilot Program issues that have been delisted may be replaced on a semi-annual basis by the next most actively traded multiply listed options classes that are not yet included in the Pilot, based on trading activity in the previous six months. The replacement issues would be added to the Pilot on the second trading day following January 1, 2010 and July 1, 2010.[9]

Report

The Exchange agrees to submit semi-annual reports to the Commission that will include sample data and analysis of information collected from April 1 through September 30, and from October 1 through March 31, for each year, for the ten most active and twenty least active options classes added to the Pilot Program.[10] As the Pilot Program matures and expands, the Exchange believes that this proposed sampling approach provides an appropriate means by which to monitor and assess the Pilot Program's impact. The Exchange will also identify, for comparison purposes, a control group consisting of the ten least active options classes from the existing 63 Pilot Program classes. This report will include, but is not limited to: (1) Data and analysis on the number of quotations generated for options included in the report; (2) an assessment of the quotation spreads for the options included in the report; (3) an assessment of the impact of the Pilot Program on the capacity of the NYSE Arca's automated systems; (4) data reflecting the size and depth of markets, and (5) any capacity problems or other problems that arose related to the operation of the Pilot Program and how the Exchange addressed them.

The Exchange believes the benefits to public customers and other market participants who will be able to express their true prices to buy and sell options have been demonstrated to outweigh the increase in quote traffic.

[9] The replacement issues will be announced to the Exchange's membership via Regulatory Bulletin and published by the Exchange on its Web site.

[10] The Exchange will continue to provide data concerning the existing 63 Pilot Program classes.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[11] of the Securities Exchange Act of 1934 (the ''Act''), in general, and furthers the objectives of Section 6(b)(5)[12] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system. The Exchange believes that the Pilot Program promotes just and equitable principles of trade by enabling public customers and other market participants to express their true prices to buy and sell options.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2009–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–44. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at NYSE Arca's principal office and on its Internet Web site at www.nyse.com. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–44 and should be submitted on or before June 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12217 Filed 5–26–09; 8:45 am]

BILLING CODE 8010–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59943; File No. SR–ISE–2009–28]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Extension of a Pilot Program for Directed Orders

May 20, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 13, 2009, the International Securities Exchange, LLC (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the ISE. The proposed rule change has been filed by the ISE as effecting a change in an existing order-entry or trading system pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(5) thereunder,[4] 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 ISE is proposing to extend the pilot period for the system change that identifies to a Directed Market Maker (''DMM'') the identity of the firm entering a Directed Order until November 30, 2009.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On January 5, 2006, the ISE initiated a system change to identify to a DMM the identity of the firm entering a Directed Order. The ISE filed this system change on a pilot basis under Section 19(b)(3)(A) of the Exchange Act of 1934 (the ''Exchange Act'') and Rule 19–4(f)(5) thereunder[5] so that it would be effective while the Commission considered a separate proposed rule change filed under Section 19(b)(2) of the Exchange Act to amend the ISE's rules to reflect the system change on a permanent basis (the ''Permanent Rule Change'').[6] The current pilot expires on May 29, 2009,[7] but the Commission has not yet taken action with respect to the Permanent Rule Change. Accordingly, the Exchange proposes to extend the pilot for an additional six months, until November 30, 2009, so that the system change will remain in effect while the Commission continues to evaluate the Permanent Rule Change.[8]

2. Statutory Basis

The basis under the Exchange Act is found in Section 6(b)(5), in that the proposed rule change is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. Extension of the pilot program will allow the Exchange to continue operating under the pilot while the Commission considers the Permanent Rule Change.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Exchange Act[9] and Rule 19b–4(f)(5)[10] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest for the protection of investors, or otherwise in furtherance of the proposes of the Exchange 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 Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml);* or
- Send an E-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–28 in the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–28. 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 Commissions 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

[1] 15 U.S.C. 78s(b)(1).

[2] 7 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(5).

[5] Exchange Act Release No. 53104 (Jan. 11, 2006), 71 FR 2142 (Jan. 19, 2006) (Notice of Filing and Immediate Effectiveness of SR–ISE–2006–02).

[6] Exchange Act Release No. 53103 (Jan. 11, 2006), 71 FR 3144 (Jan. 19, 2006) (Notice of Filing of SR–ISE–2006–01).

[7] Exchange Act Release No. 59276 (January 22, 2009), 74 FR 5007 (January 28, 2009) (Notice of Filing and Immediate Effectiveness of SR–ISE–2009–02).

[8] The ISE anticipated that extension of the pilot might be necessary and included this in the filing for the initial pilot. *See supra* note 5, at footnote 5.

[9] 5 U.S.C. 78s(b)(3)(A).

[10] 7 CFR 240.19b–4(f)(5).

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. 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–ISE–2009–28 and should be submitted by June 17, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–12216 Filed 5–26–09; 8:45 am]

BILLING CODE 8010–01–P

[11] 7 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 6625]

Title: Shipping Coordinating Committee Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Friday, June 26th, 2008, in Room 4202 of the United States Coast Guard Headquarters Building, 2100 2nd Street, SW., Washington, DC 20593. The purpose of the meeting is to prepare for the 59th Session of the International Maritime Organization (IMO) Marine Environment Protection Committee (MEPC 59) to be held at the IMO's London headquarters from July 13–17, 2009. The primary matters to be discussed at MEPC 59 include:

—Harmful aquatic organisms in ballast water;
—Recycling of ships;
—Prevention of air pollution from ships;
—Consideration and adoption of amendments to mandatory instruments;
—Interpretations of, and amendments to, MARPOL and related instruments;
—Implementation of the International Convention on Oil Pollution Preparedness,
Response and Cooperation (OPRC) and the OPRC–Hazardous and Noxious
Substances Protocol and relevant conference resolutions;
—Identification and protection of Special Areas and Particularly Sensitive Sea Areas;
—Inadequacy of reception facilities;
—Reports of sub-committees;
—Work of other bodies;
—Status of conventions;
—Harmful anti-fouling systems for ships;
—Promotion of implementation and enforcement of MARPOL and related Instruments;
—Technical Cooperation Sub-program for the Protection of the Marine Environment;
—Role of the human element;
—Formal safety assessment;
—Development of a guidance document for minimizing the risk of ship strikes with Cetaceans;
—Noise from commercial shipping and its adverse impacts on marine life;
—Work program of the Committee and subsidiary bodies;
—Application of the Committees' Guidelines; and
—Election of MEPC Chairman and Vice-Chairman for 2010.

Members of the public may attend the June 26th meeting of the SHC up to the seating capacity of the room. Due to security considerations, two valid, government-issued photo identification documents must be presented to gain entrance to the building. The Coast Guard Headquarters building is accessible by taxi and privately owned conveyance. Please note that parking in the vicinity of the building is extremely limited and that public transportation is not generally available. To facilitate attendance to this meeting of the SHC, those who plan to attend should contact the meeting coordinator, Lieutenant Commander Brian Moore—not later than 9:30 a.m. on Tuesday, June 23, 2009—by e-mail at *brian.e.moore@uscg.mil;* by phone at (202) 372–1434; or by writing to Commandant (CG–5224), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 1601, Washington, DC 20593–0001.

Printed copies of documents associated with MEPC 59 will not be provided at this meeting. To request documents in electronic format (via e-mail or CD–ROM), please write to the address provided below, or request documents via the following Internet link: *http://www.uscg.mil/hq/cg5/cg522/cg5224/imomepc.asp.* Additional information regarding this and other SHC public meetings and associated IMO meetings may be found at: *www.uscg.mil/imo.*

Dated: May 18, 2009.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–12302 Filed 5–26–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice 6626]

Shipping Coordinating Committee Meeting

Title: Shipping Coordinating Committee Meeting.

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 a.m. on Wednesday, July 8, 2009, in Room 6103 of the United States Coast Guard Headquarters Building, 2100 Second Street, SW., Washington, DC 20593. The purpose of the meeting is to prepare for the fifty-fifth Session of the International Maritime Organization (IMO) Sub-committee on Safety of Navigation (NAV 55) to be held at the IMO's London headquarters, from July 27 to July 31, 2009. The primary matters to be considered at NAV 55 include:

—Routing of ships, ship reporting and related matters;
—Development of guidelines for integrated bridge systems (IBS), including performance standards for bridge alert management;
—Guidelines for consideration of requests for safety zones larger than 500 meters around artificial islands, installations and structures in the EEZ;
—Amendments to the Performance standards for Voyage Data Recorders (VDR) and Simplified VDR (S–VDR);
—Development of procedures for updating shipborne navigation and communications equipment;
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU–R Study Group 8;
—Code of conduct during demonstrations/campaigns against ships on high seas;
—Measures to minimize incorrect data transmissions by automatic identification system (AIS) equipment;
—Development of an e-navigation strategy implementation plan;
—Guidelines on the layout and ergonomic design of safety centers on passenger ships;
—Review of vague expressions in the International Convention for the Safety of Life at Sea (SOLAS) regulation V/22;

—Revision of the Guidance on the application of AIS binary messages;
—Improved safety of pilot transfer arrangements;
—Casualty analysis; and
—Consideration of International Association of Classification Societies (IACS) unified interpretations.

Members of the public may attend the July 8th meeting of the SHC up to the seating capacity of the room. Due to security considerations, two valid, government-issued photo identification documents must be presented to gain entrance to the building. The Coast Guard Headquarters building is accessible by taxi and privately owned conveyance. Please note that parking in the vicinity of the building is extremely limited and that public transportation is not generally available.

To facilitate attendance to this meeting of the SHC, those who plan to attend should contact the meeting coordinator, Mr. Edward J. LaRue Jr., not later than 4 p.m. on Thursday, July 3, 2009 by e-mail at *Edward.J.LaRue@uscg.mil,* by phone at (202) 372–1564, by fax at (202) 372–1930, or by writing to Commandant (CG–5413), U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Room 1409, Washington, DC 20593–0001. Additional information regarding this and other SHC public meetings and associated IMO meetings may be found at: *http://www.uscg.mil/imo.*

Dated: May 19, 2009.

Mark Skolnicki,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. E9–12304 Filed 5–26–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF STATE

[Public Notice Number 6627]

Overseas Schools Advisory Council Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Thursday, June 18, 2009, at 9:30 a.m. in Conference Room 1105, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public and will last until approximately 12 p.m.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes a review of the recent activities of American-sponsored overseas schools and the overseas schools regional associations, a review of projects selected for the 2008 and 2009 Educational Assistance Program, which are under development, and reports on the use of the projects developed under the Educational Assistance Program by overseas schools since inception of the program in 1983.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, DC 20522–0132, telephone 202–261–8200, prior to June 8, 2009. Each visitor will be asked to provide his/her date of birth and either driver's license or passport number at the time of registration and attendance, and must carry a valid photo ID to the meeting. Any requests for reasonable accommodation should be made at the time of registration. All such requests will be considered, however, requests made after June 11th might not be possible to fill. All attendees must use the C Street entrance to the building.

Dated: May 20, 2009.

Keith D. Miller,

Executive Secretary, Overseas Schools Advisory Council, Department of State.

[FR Doc. E9–12306 Filed 5–26–09; 8:45 am]

BILLING CODE 4710–24–P

SUSQUEHANNA RIVER BASIN COMMISSION

Notice of Public Hearing and Commission Meeting

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice of public hearing and commission meeting.

SUMMARY: The Susquehanna River Basin Commission will hold a public hearing as part of its regular business meeting beginning at 8:30 a.m. on June 18, 2009, in Binghamton, N.Y. At the public hearing, the Commission will consider: (1) Action on certain water resources projects; (2) action on two projects involving diversions; (3) the rescission of one previous docket approval; (4) enforcement actions against three projects; and (5) two requests for an administrative hearing on projects previously approved by the Commission. Details concerning the matters to be addressed at the public hearing and business meeting are contained in the Supplementary Information section of this notice.

DATES: June 18, 2009.

ADDRESSES: Holiday Inn Binghamton-Downtown, 2–8 Hawley Street, Binghamton, NY.

FOR FURTHER INFORMATION CONTACT: Richard A. Cairo, General Counsel, *telephone:* (717) 238–0423, ext. 306; *fax:* (717) 238–2436; *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *telephone:* (717) 238–0423, ext. 304; *fax:* (717) 238–2436; *e-mail: srichardson@srbc.net.*

SUPPLEMENTARY INFORMATION: In addition to the public hearing and its related action items identified below, the business meeting also includes actions or presentations on the following items: (1) Hydrologic conditions of the basin; (2) the SRBC ''Priority Management Area'' on flooding; (3) presentation of the Maurice K. Goddard award; (4) an Application Fee Policy for Mine Drainage Withdrawals to guide the granting of fee waivers or reductions to projects using water impaired by abandoned mine drainage; (5) proposed rulemaking regarding Federal licensing/re-licensing of projects and other revisions; (6) revision of the FY 2010 budget; (7) adoption of a FY 2011 budget; (8) ratification of a contract agreement; and (9) election of a new Chairman and Vice Chairman to serve in the next fiscal year. The Commission will also hear a Legal Counsel's report.

Public Hearing—Projects Scheduled for Action

1. Project Sponsor and Facility: ALTA Operating Company, LLC (Turner Lake), Liberty Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.393 mgd.

2. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for groundwater withdrawal of 0.099 mgd from Laurel Springs.

3. Project Sponsor and Facility: Charles Header-Laurel Springs Development, Barry Township, Schuylkill County, Pa. Application for

consumptive water use of up to 0.099 mgd.

4. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Chemung River), Athens Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

5. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Sugar Creek), Burlington Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

6. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—Newton), Terry Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

7. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Susquehanna River—McCarthy), Wyalusing Township, Bradford County, Pa. Application for surface water withdrawal of up to 1.440 mgd.

8. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek—Monroe Hose), Monroe Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.400 mgd.

9. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Towanda Creek—DeCristo), Leroy Township, Bradford County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

10. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek—Wells), Wyalusing Borough, Bradford County, Pa. Application for surface water withdrawal of up to 0.999 mgd.

11. Project Sponsor and Facility: Chesapeake Appalachia, LLC (Wyalusing Creek—Vanderfeltz), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.499 mgd.

12. Project Sponsor and Facility: Citrus Energy (Inez Moss Pond), Benton Township, Columbia County, Pa. Application for surface water withdrawal of up to 0.099 mgd.

13. Project Sponsor and Facility: East Resources, Inc. (Tioga River—Greer), Richmond Township, Tioga County, Pa. Application for surface water withdrawal of up to 0.107 mgd.

14. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (Black Moshannon Creek), Snow Shoe Township, Centre County, Pa. Application for surface water withdrawal of up to 0.140 mgd.

15. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (East Branch Tunkhannock Creek), Clifford Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.130 mgd.

16. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (Little Muncy Creek—LYC–01, Jordan), Franklin Town, Lycoming County, Pa. Application for surface water withdrawal of up to 0.041 mgd.

17. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (Little Muncy Creek—LYC–02, Temple), Franklin Town, Lycoming County, Pa. Application for surface water withdrawal of up to 0.091 mgd.

18. Project Sponsor and Facility: EXCO–North Coast Energy, Inc. (South Branch Tunkhannock Creek—WSC), Benton Township, Lackawanna County, Pa. Application for surface water withdrawal of up to 0.091 mgd.

19. Project Sponsor and Facility: EXCO-North Coast Energy, Inc. (West Branch Susquehanna River—Sproul State Forest), Burnside Township, Centre County, Pa. Application for surface water withdrawal of up to 1.080 mgd.

20. Project Sponsor: Exelon Generation Company, LLC. Project Facility: Three Mile Island Generating Station, Unit 1, Londonderry Township, Dauphin County, Pa. Modification to project features of the consumptive water use approval (Docket No. 19950302).

21. Project Sponsor and Facility: Fortuna Energy Inc. (Towanda Creek—Franklin Township Volunteer Fire Department), Franklin Township, Bradford County, Pa. Application for surface water withdrawal of up to 2.000 mgd.

22. Project Sponsor and Facility: Grand Water Rush, LLC (Grand Farm Pond), Dunnstable Township, Clinton County, Pa. Application for surface water withdrawal of up to 0.022 mgd.

23. Project Sponsor and Facility: J–W Operating Company (Abandoned Mine Pool—Unnamed Tributary to Finley Run), Shippen Township, Cameron County, Pa. Application for surface water withdrawal of up to 0.090 mgd.

24. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Hollywood AMD Treatment Plant, Huston and Jay Townships, Clearfield and Elk Counties, Pa. Application for groundwater withdrawal of up to 2.890 mgd from six deep mine complexes.

25. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, Pa. Application for groundwater withdrawal of up to 7.400 mgd from Recovery Wells 1, 2, and 3, and D Seam Discharge.

26. Project Sponsor: PPL Holtwood, LLC. Project Facility: Holtwood Hydroelectric Station, Martic and Conestoga Townships, Lancaster County, and Chanceford and Lower Chanceford Townships, York County, Pa. Applications for redevelopment modifications of its operations on the lower Susquehanna River, including the addition of a second power station and associated infrastructure.

27. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Application for a withdrawal of up to 0.432 mgd from the Gordon Well.

28. Project Sponsor and Facility: Southwestern Energy Company (Tunkhannock Creek—Price), Gibson Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.380 mgd.

29. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek—Stang 1), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

30. Project Sponsor and Facility: Stone Energy Corporation (Wyalusing Creek—Stang 2), Rush Township, Susquehanna County, Pa. Application for surface water withdrawal of up to 0.750 mgd.

31. Project Sponsor and Facility: Susquehanna Gas Field Services, L.L.C. (Meshoppen Creek), Meshoppen Borough, Wyoming County, Pa. Application for surface water withdrawal of up to 0.145 mgd.

32. Project Sponsor: Titanium Metals Corporation. Project Facility: Titanium Hearth Technologies, Inc., d.b.a. TIMET North American Operations, Caernarvon Township, Berks County, Pa. Application for groundwater withdrawal of up to 0.099 mgd from Well 1.

33. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for surface water withdrawal from the Susquehanna River of up to 55.050 mgd.

34. Project Sponsor: UGI Development Company. Project Facility: Hunlock Power Station, Hunlock Township, Luzerne County, Pa. Application for consumptive water use of up to 0.870 mgd.

35. Project Sponsor and Facility: Ultra Resources, Inc. (Elk Run), Gaines Township, Tioga County, Pa.

Application for surface water withdrawal of up to 0.021 mgd.

36. Project Sponsor and Facility: Valley Country Club, Sugarloaf Township, Luzerne County, Pa. Applications for groundwater withdrawal of up to 0.090 mgd from the Pumphouse Well and 0.090 mgd from the Shop Well.

Public Hearing—Projects Scheduled for Action Involving a Diversion:

1. Project Sponsor: Pennsylvania Department of Environmental Protection, Bureau of Abandoned Mine Reclamation. Project Facility: Lancashire No. 15 AMD Treatment Plant, Barr Township, Cambria County, Pa. Application for an into-basin diversion of up to 10.000 mgd from the Ohio River Basin.

2. Project Sponsor and Facility: Schuylkill County Municipal Authority, Pottsville Public Water Supply System, Mount Laurel Subsystem, Butler Township, Schuylkill County, Pa. Applications for: (1) An out-of-basin diversion of up to 0.432 mgd to the Delaware River Basin for water supply; and (2) an existing into-basin diversion of up to 0.485 mgd from the Delaware River Basin.

Public Hearing—Projects Scheduled for Rescission Action

1. Project Sponsor: Corning Incorporated. Project Facility: Fall Brook Facility (Docket No. 19960301), Corning, Steuben County, N.Y.

Public Hearing—Enforcement Actions

1. Project Sponsor: Belden & Blake Corporation (EnerVest Operating, LLC). Project Facility: Sturdevant #1 Well, Smithfield Township, Bradford County, Pa.

2. Project Sponsor: Chester County Solid Waste Authority. Project Facility: Lanchester Landfill, Lancaster and Chester Counties, Pa.

3. Project Sponsor: East Resources, Inc. (Tioga River). Project Facility: American Truck Stop Site, Tioga County, Pa.

Public Hearing—Request for Administrative Hearing

1. Petitioner Mark A. Givler; RE: Chief Oil and Gas, Docket No. 20081203, approved December 4, 2008.

2. Petitioner Delta Borough, York County, Pennsylvania; RE: Delta Borough Public Water Supply Well No. DR–2; Docket No. 20090315, approved March 12, 2009.

Opportunity To Appear and Comment

Interested parties may appear at the above hearing to offer written or oral comments to the Commission on any matter on the hearing agenda, or at the business meeting to offer written or oral comments on other matters scheduled for consideration at the business meeting. The chair of the Commission reserves the right to limit oral statements in the interest of time and to otherwise control the course of the hearing and business meeting. Written comments may also be mailed to the Susquehanna River Basin Commission, 1721 North Front Street, Harrisburg, Pennsylvania 17102–2391, or submitted electronically to Richard A. Cairo, General Counsel, *e-mail: rcairo@srbc.net* or Stephanie L. Richardson, Secretary to the Commission, *e-mail: srichardson@srbc.net.* Comments mailed or electronically submitted must be received prior to June 16, 2009, to be considered.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.*, 18 CFR parts 806, 807, and 808.

Dated: May 18, 2009.

Thomas W. Beauduy,

Deputy Director.

[FR Doc. E9–12196 Filed 5–26–09; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–20]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 16, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0364 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Ralen Gao (202) 267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 21, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2009–0364.

Petitioner: Air Charter Service, Inc.

Section of 14 CFR Affected: 14 CFR 135.165(g).

Description of Relief Sought: Air Charter Service, Inc. (Air Charter), seeks relief from § 135.165(g) to allow Air Charter to operate extended over-water flight routes which contain a two hour 15 minute very high frequency (VHF) communications gap instead of a 30 minute VHF communications gap.

[FR Doc. E9–12221 Filed 5–26–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 690]

Twenty-Five Years of Rail Banking: A Review and Look Ahead

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice.

SUMMARY: The Surface Transportation Board will hold a public hearing beginning at 9 a.m. on Wednesday, July 8, 2009, in the Hearing Room on the first floor of the Board's headquarters in Washington, DC. The purpose of the public hearing will be to examine the impact, effectiveness, and future of rail banking under Section 8(d) of the National Trails System Act. Persons wishing to speak at the hearing should notify the Board in writing.

DATES: The public hearing will take place on Wednesday, July 8, 2009. Any person wishing to speak at the hearing should file with the Board a combined notice of intent to participate (identifying the party, the proposed speaker, the time requested, and the topic(s) to be covered) and the person's written testimony, as soon as possible, but no later than June 29, 2009. Written submissions by interested persons who do not wish to appear at the hearing are also due by June 29, 2009.

ADDRESSES: All filings may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the Board's *http://www.stb.dot.gov* Web site, at the ''E-FILING'' link. Any person submitting a filing in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, *Attn:* STB Ex Parte No. 690, 395 E Street, SW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: Victoria Rutson at (202) 245–0295. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: (800) 877–8339.

SUPPLEMENTARY INFORMATION: In 1983, Congress added Section 8(d) to the National Trails System Act to create a program—codified at 16 U.S.C. 1247(d)—to allow preservation of railroad corridors for possible future rail use, called ''rail banking,'' and to allow railroad corridors that would be abandoned to be used in the interim as recreational trails.

In brief, the Trails Act and the Board's implementing regulations give interested parties the opportunity to negotiate voluntary agreements to use for recreational trails railroad rights-of-way that otherwise would be abandoned. The trail sponsor must agree to assume responsibility for managing the trail, for paying property taxes on the right-of-way, and for any liability in connection with trail use. In turn, the rail carrier may salvage its track and discontinue service on the line. If the parties reach a Trails Act agreement, the right-of-way can be used as a trail until (if ever) a rail carrier decides to restore rail service on the line.

The Board has issued numerous decisions authorizing trail use negotiation periods, many of which have resulted in agreements between the rail carrier and the party seeking interim trail use. To date, the Board has authorized nine rail banked lines for the restoration of rail service. Very recently (on May 11, 2009, in STB Docket No. AB–3 (Sub-No. 104X), *Missouri Pacific Railroad Company—Abandonment Exemption—In Muskogee, McIntosh and Haskell Counties, OK),* the Board vacated a Notice of Interim Trail Use in part to permit the restoration of active rail service on a portion of a rail banked line.

In recent years, an increasing number of questions have been brought to the Board, both formally and informally, regarding aspects of the rail banking program. Formally, the Board has pending before it STB Finance Docket No. 35116, *R.J. Corman Railroad Company/Pennsylvania Lines Inc.—Construction and Operation Exemption—in Clearfield County, PA,* involving a proposal to construct and operate over 10 miles of a previously fully abandoned rail right-of-way and to reactivate a 9.3-mile portion of a connecting rail banked line. Informally, the Board has been asked who would be responsible for bearing the cost of rebuilding a railroad bridge removed during interim trail use if active rail service should ever be restored.

To allow a more detailed discussion of these and other issues, the Board is holding a hearing to explore the issues surrounding the rail banking program. These issues include:

- Has rail banking under Section 8(d) been a success for rail carriers and trail users?
- Have most rail corridors proposed for rail banking under Section 8(d) actually been developed into trails?
- Should the Board require notice or a copy of the Trails Act agreements to be submitted to the Board?
- What can or should the Board do to further facilitate rail banking and encourage the restoration of active rail service on rail banked lines?
- Who should bear the cost to restore a rail corridor for rail service, including replacing any bridges that may have been removed during interim trail use?
- How have reversionary property owners been affected by rail banking?

Parties are also invited to comment on the rail banking program in general and the future of rail banking in an era of constrained rail infrastructure.

Date of Hearing: The hearing will begin at 9 a.m. on Wednesday, July 8, 2009, in the 1st floor hearing room at the Board's headquarters at 395 E Street, SW., in Washington, DC, and will continue, with short breaks if necessary, until every person scheduled to speak has been heard.

Notice of Intent To Participate and Testimony: Any person wishing to speak at the hearing should file with the Board a combined notice of intent to participate (identifying the party, the proposed speaker, the time requested, and the topic(s) to be covered) and the person's written testimony, as soon as possible, but no later than June 29, 2009. Also, any interested person who wishes to submit a written statement without appearing at the July 8 hearing should file that statement by June 29, 2009.

Board Releases and Live Video Streaming Available via the Internet: Decisions and notices of the Board, including this notice, are available on the Board's Web site at *http://www.stb.dot.gov.* This hearing will be available on the Board's Web site by live video streaming. To access the hearing, click on the ''Live Video'' link under ''Information Center'' at the left side of the home page beginning at 9 a.m. on July 8, 2009.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Dated: May 21, 2009.

By the Board.

Anne K. Quinlan,

Acting Secretary.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–12237 Filed 5–26–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (0896a)]

Proposed Information Collection (VA Subcontracting Report) Activity; Comment Request

AGENCY: Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to implement the subcontracting review mechanism requirement of Public Law 109–461, VA will collect information from subcontractors identified by prime contractors in their subcontracting plans.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before July 27, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov*; or David Canada (00SB), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or *e-mail: david.canada@va.gov*. Please refer to ''OMB Control No. 2900–New (08969)'' 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: David Canada at (202) 461–4253 or FAX (202) 461–4301.

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, OSDBU invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OSDBU's functions, including whether the information will have practical utility; (2) the accuracy of OSDBU'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: VA Subcontracting Report, VA Form 0896a.

OMB Control Number: 2900–New.

Type of Review: New collection.

Abstract: In accordance with Public Law 109–461 Section 8127 (a)(4), ''The Secretary shall establish a review mechanism to ensure that, in the case of a subcontract of a Department contract that is counted for purposes of meeting a goal established pursuant to this section, the subcontract was actually awarded to a business concern that may be counted for purposes of meeting that goal.'' VA Form 0896a will be used to collect information from subcontractors to compare information obtained from subcontracting plans submitted by prime contractors in order to determine the accuracy of the data reported by prime contractors.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 646 hours.

Estimated Average Burden Per Respondent: 2 Hours.

Frequency of Response: One time.

Estimated Number of Respondents: 323.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–12300 Filed 5–26–09; 8:45 am]

BILLING CODE P

Federal Register

Wednesday,
May 27, 2009

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for Coal Preparation and Processing Plants; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2008–0260; FRL–8908–7]

RIN 2060–AO57

Standards of Performance for Coal Preparation and Processing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal.

SUMMARY: EPA is proposing a supplemental action to the proposed amendments to the new source performance standards for coal preparation and processing plants published on April 28, 2008. The 2008 proposal, among other things, proposed to revise the particulate matter and opacity standards for thermal dryers, pneumatic coal cleaning equipment, and coal handling equipment located at coal preparation and processing plants. This supplemental action proposes to revise the particulate matter emissions and opacity limits included in the original proposal for thermal dryers, pneumatic coal-cleaning equipment, and coal handling equipment. It also proposes to expand the applicability of the thermal dryer standards so that the proposed standards for thermal dryers would apply to both direct contact and indirect contact thermal dryers drying all coal ranks and pneumatic coal-cleaning equipment cleaning all coal ranks. In addition, it proposes to establish a sulfur dioxide emission limit and a combined nitrogen oxide and carbon monoxide emissions limit for thermal dryers. We are also proposing to amend the definition of coal for purposes of subpart Y to include petroleum coke and coal refuse. Finally, it proposes to establish work practice standards to control coal dust emissions from open storage piles and roadways associated with coal preparation and processing plants.

DATES: *Comments*. Comments must be received on or before July 13, 2009. If anyone contacts EPA by June 8, 2009 requesting to speak at a public hearing, EPA will hold a public hearing on June 11, 2009. Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before June 26, 2009.

Because, under the terms of a consent decree, the final action must be signed not later than September 26, 2009, EPA will not grant requests for extensions beyond these dates.

ADDRESSES: *Comments*. Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0260, by one of the following methods:

- *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *E-mail: a-and-r-docket@epa.gov*.
- *By Facsimile:* (202) 566–1741.
- *Mail:* Air and Radiation Docket, U.S. EPA, Mail Code 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

Please include a total of two copies. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attn:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503. EPA requests a separate copy also be sent to the contact person identified below (see **FOR FURTHER INFORMATION CONTACT**).

- *Hand Delivery:* EPA Docket Center, Docket ID Number EPA–HQ–OAR–2008–0260, EPA West Building, 1301 Constitution Ave., NW., Room 3334, Washington, DC, 20004. Such deliveries are accepted only during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0260. 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 regulations.gov or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket EPA/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 Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, Energy Strategies Group, Sector Policies and Programs Division (D243–01), U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5025, facsimile number (919) 541–5450, electronic mail (e-mail) address: *johnson.mary@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities*. Entities potentially affected by this proposed action include, but are not limited to, the following:

Category	NAICS [1]	Examples of regulated entities
Industry	212111	Bituminous Coal and Lignite Surface Mining.
	212112	Bituminous Coal Underground Mining.
	221112	Fossil Fuel Electric Power Generation.
	212113	Anthracite Mining.
	213113	Support Activities for Coal Mining.

Category	NAICS [1]	Examples of regulated entities
	322121	Paper (except Newsprint) Mills.
	324199	All other petroleum and coal products manufacturing.
	325110	Petrochemical Manufacturing.
	327310	Cement Manufacturing.
	331111	Iron and Steel Mills.
Federal Government	22112	Fossil fuel-fired electric utility steam generating units owned by the Federal Government.
State/local/tribal government	22112 921150	Fossil fuel-fired electric utility steam generating units owned by municipalities. Fossil fuel-fired electric steam generating units in Indian Country.

[1] North American Industry Classification System (NAICS) code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the proposed rule. This table lists categories of entities that may have coal preparation and processing plants regulated by this proposed rule. To determine whether your facility is regulated by the proposed rule, you should examine the applicability criteria in § 60.250 and the definitions in § 60.251. If you have any questions regarding the applicability of the proposed rule to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

WorldWide Web (WWW). Following the Administrator's signature, a copy of the proposed amendments will be posted on the Technology Transfer Network's (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Public Hearing. If anyone contacts EPA by June 8, 2009 requesting to speak at a public hearing, EPA will hold a public hearing on June 11, 2009. If a public hearing is held, it will be held at 10 a.m. at the EPA Facility Complex in Research Triangle Park, North Carolina or at an alternate site nearby. Contact Mrs. Pamela Garrett at 919–541–7966 to request a hearing, to request to speak at a public hearing, to determine if a hearing will be held, or to determine the hearing location.

Outline. The information presented in this preamble is organized as follows:

I. Background
II. Summary of Proposed Amendments
A. Affected Facilities
B. PM and Opacity Limits for Thermal Dryers
C. SO_2, NO_X, and CO Emission Limits for Thermal Dryers
D. PM and Opacity Limits for Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading Systems
E. Emissions Monitoring Requirements
F. Opacity Monitoring Requirements for Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading Systems
G. Electronic Reporting
H. Addition of Petroleum Coke and Coal Refuse to the Definition of Coal
I. Additional Amendments
III. Rationale for the Proposed Amendments
A. Additional Affected Facilities
B. Selection of Thermal Dryer PM and Opacity Emissions Limits
C. Selection of Thermal Dryer SO_2, NO_X, and CO Emissions Limits
D. Selection of Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading System PM and Opacity Limits
E. Selection of Monitoring Requirements
F. Selection of Opacity Monitoring Requirements for Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading Systems
G. Required Electronic Reporting
H. Addition of Petroleum Coke and Coal Refuse to the Definition of Coal
I. Additional Amendments
J. Emissions Reductions
IV. Modification and Reconstruction Provisions
V. Summary of Costs, Environmental, Energy, and Economic Impacts
VI. Request for Comment
VII. Statutory and Executive Order Reviews
A. *Executive Order 12866:* Regulatory Planning and Review
B. Paper Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. *Executive Order 13132:* Federalism
F. *Executive Order 13175:* Consultation and Coordination With Indian Tribal Governments
G. *Executive Order 13045:* Protection of Children From Environmental Health and Safety Risks
H. *Executive Order 13211:* Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. *Executive Order 12898:* Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. Background

On April 28, 2008 (73 FR 22901), we proposed amendments to the New Source Performance Standards (NSPS) for Coal Preparation and Processing Plants (40 CFR part 60, subpart Y). The **Federal Register** action for that original proposal included additional background information on the coal preparation NSPS. That information is not repeated in this action. EPA received numerous comments in response to the April 2008 proposal. After reviewing those comments and considering additional data, EPA decided to publish this supplemental proposal which contains proposed emission limits and monitoring requirements that differ from those in the original action and proposes to apply those requirements to additional affected facilities.

II. Summary of Proposed Amendments

In this supplemental action, we are proposing to establish emissions standards for both direct contact and indirect thermal dryers and pneumatic coal-cleaning equipment that process all coal ranks. We are also proposing to establish work practice standards to control coal dust emissions from open storage piles and roadways associated with coal preparation and processing plants. In addition, we are proposing to establish a sulfur dioxide (SO_2) emission limit and a combined nitrogen oxide (NO_X) and carbon monoxide (CO) emissions limit for thermal dryers. Finally, we are proposing particulate matter (PM) emission limits, opacity limits, and monitoring requirements that differ from those included in the April 2008 proposal. For all standards proposed in the April 2008 proposed rule, this supplemental proposal will not change the applicability date for determining whether a source constitutes a ''new source'' subject to the final version of such standards. All standards originally included in the April 2008 proposed rule, regardless of whether the level of the standard is modified in this supplemental proposal or in an eventual final rule, apply to

sources constructed, modified, or reconstructed after April 28, 2008. Standards, such as the SO_2 and combined NO_X and CO standards, proposed for the first time in this supplemental proposal, apply to all sources constructed, modified, or reconstructed after May 27, 2009. A summary of the proposed amendments is presented below.

A. Affected Facilities

The existing NSPS for coal preparation and processing plants in 40 CFR part 60, subpart Y establishes emission limits for the following affected facilities located at coal preparation and processing plants which process more than 181 megagrams (Mg) (200 tons) of coal per day: thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and transfer and loading systems. The terms ''thermal dryer'' and ''pneumatic coal-cleaning equipment'' are defined to include only facilities that process bituminous coal and ''coal storage system'' is defined to exclude open storage piles.

In the April 2008 proposal, we did not propose any revisions to these provisions. Several commenters suggested that standards should also be developed for indirect thermal dryers, thermal dryers drying all coal ranks, open storage piles, and coal dust associated with roadways associated with coal preparation and processing plants. Commenters said EPA's original rationale for limiting the applicability for thermal dryers was a lack of emissions data and thermal dryers, and pneumatic coal-cleaning equipment processing non-bituminous coals did not exist and that these reasons are no longer valid. Commenters said indirect thermal dryers and direct contact thermal dryers ''upgrading'' subbituminous and lignite will become more common in the future. Even though power plant emissions might be decreased, if emissions standards are not established on the pre-combustion process, they argued, there is no environmental benefit and potential net degradation to air quality from coal ''upgrading.''

For open storage piles and roadways, commenters pointed out that both are significant sources of PM emissions for which control technology is available. One commenter pointed out that enclosures, wind fences and other barriers, and wet or chemical suppression are available control technologies. Potential controls for coal road dust include tire or truck wash systems, sweeper trucks, and wet suppression.

Based on our review of public comments and subsequent analysis, we are proposing to amend the definition of thermal dryer for units constructed after May 27, 2009 to include both direct and indirect dryers drying all coal ranks. We are also proposing to amend the definition of pneumatic coal-cleaning equipment for units constructed after May 27, 2009 to include pneumatic coal-cleaning equipment cleaning all coal ranks. In addition, we are proposing to establish work practice standards that apply to open storage piles and roads associated with a coal preparation plant constructed after May 27, 2009.

B. PM and Opacity Limits for Thermal Dryers

In the April 2008 proposed rule, we proposed a PM standard of 0.046 grams per dry standard cubic meter (g/dscm) (0.020 grains per dry standard cubic foot (gr/dscf)) and proposed to retain the existing 1976 rule's opacity limit of less than 20 percent for thermal dryers constructed, modified, or reconstructed after April 28, 2008. We received comments that the PM limit would be prohibitively expensive for modified and reconstructed units to achieve, but that the limit should be lower for new units and should be based on the use of a fabric filter (baghouse).

Based on our review of public comments and subsequent analysis, we are now proposing to revise our April 2008 proposal regarding PM and opacity standards for thermal dryers. We are now proposing separate standards for new, reconstructed, and modified units. We are proposing to revise the limits for new units constructed after April 28, 2008, to 0.023 g/dscm (0.010 gr/dscf) of PM and an opacity limit of less than 10 percent. We are proposing to revise the PM limit for units reconstructed after April 28, 2008, to 0.045 g/dscm (0.020 gr/dscf) and proposing to maintain the existing 1976 rule's opacity limit of less than 20 percent. For units modified after April 28, 2008, we are proposing to maintain the existing 1976 rule's PM limit of 0.070 g/dscm (0.031 gr/dscf) and the existing 1976 rule's opacity limit of less than 20 percent.

C. SO_2, NO_X, and CO Emission Limits for Thermal Dryers

The existing NSPS does not limit emissions of SO_2, NO_X, or CO from coal preparation facilities, and in the April 2008 proposed rule, we did not propose to add limits for these pollutants. A commenter suggested that standards should be established for each pollutant because thermal dryers emit these pollutants and can cause or contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare. The commenter also said using AP–42 emission factors, a 2,000 ton/hr coal thermal dryer would emit 12,000 tons/yr SO_2 and 1,400 tons/yr NO_X, and because cost-effective controls exist the EPA should base requirements on the use of those controls.

Based on our review of public comments and subsequent analysis, for owners/operators of thermal dryers constructed, modified, or reconstructed after May 27, 2009 we are proposing to add the following emissions limits: for new, reconstructed, and modified units, an SO_2 limit of 85 nanograms per Joule (ng/J) (0.20 pounds per million British thermal units (lb/MMBtu)), or 50 percent reduction of potential SO_2 emissions and no more than 520 ng/J; for new units, a combined NO_X and CO limit of 280 ng/J (0.65 lb/MMBtu); for reconstructed units and modified units, a combined NO_X and CO limit of 430 ng/J (1.0 lb/MMBtu).

D. PM and Opacity Limits for Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading Systems

The original 1976 rulemaking treated each coal processing and conveying equipment, coal storage systems, and transfer and loading systems operation as a separate affected facility. However, it grouped them together for the purpose of establishing a single emissions standard. This was done because all of the affected facilities could use similar control devices and achieve comparable emissions rates. We have concluded that this is still an appropriate approach. While each operation is a separate affected facility, all are either fugitive sources or point sources of PM and similar control equipment can be used on each affected facility resulting in comparable emissions. If additional data is submitted during the comment period that justifies different opacity limits for different coal handling operations, we will consider that approach in the final rule.

The original 1976 rulemaking did not include a PM limit for coal processing and conveying equipment, coal storage systems, and transfer and loading systems. However, the original rulemaking included an opacity limit of less than 20 percent for all of these affected facilities. For pneumatic coal cleaning equipment, the original rulemaking included both a PM limit of

0.040 g/dscm (0.017 gr/dscf) and an opacity limit of less than 10 percent.

In the April 2008 proposed rule, we proposed a PM limit of 0.011 g/dscm (0.0050 gr/dscf) and an opacity limit of less than 5 percent for pneumatic coal-cleaning equipment and coal processing and conveying equipment, coal storage systems, and transfer and loading systems processing subbituminous and lignite coals that commenced construction, reconstruction, or modification after April 28, 2008. We proposed the same limit for both pneumatic coal-cleaning equipment and coal handling operations because we determined that the best demonstrated technology (BDT) for both was a fabric filter. In addition, we proposed to establish a requirement that coal handling equipment processing subbituminous and lignite coals must be vented to a control device. Multiple commenters challenged the requirement that coal handling equipment processing subbituminous and lignite coals must vent to a control device, and the levels of the PM and opacity limits.

Based on our review of public comments and subsequent analysis, we have concluded it is not appropriate to require coal handling equipment processing subbituminous and lignite coals be vented to a control device. In addition, after further analysis, we are proposing to revise the PM emission limits for pneumatic coal-cleaning equipment and mechanically vented coal handling equipment processing all coal ranks constructed, modified, or reconstructed after April 28, 2008, to 0.023 g/dscm (0.010 gr/dscf). In addition, we are proposing to revise the opacity standard to no greater than 5 percent for all pneumatic coal-cleaning equipment, coal processing and conveying equipment, coal storage systems, and transfer and loading systems that commenced construction, reconstruction, or modification after April 28, 2008.

E. Emissions Monitoring Requirements

In the April 2008 proposed rule, we proposed to require initial and annual performance tests for all new thermal dryers, pneumatic coal-cleaning equipment, and subbituminous and lignite coal handling equipment vented to a control device. Commenters suggested that annual performance testing is unduly burdensome for subpart Y affected facilities and suggested either eliminating PM performance testing completely for coal handling equipment or tiered testing requirements depending on the results of the most recent performance test.

Based on our review of public comments and further analysis, we are proposing to amend the testing requirements as follows: first, owners/operators of an affected facility with design potential emissions rates, considering controls, of 1.0 Mg (1.1 tons) per year or less would be required to perform an initial performance test; however, annual performance testing would not be required as long as the design emissions rate is less than or equal to the applicable emissions limit (confirmed by the initial performance test), the manufacturer's recommended maintenance procedures are followed, and the unit operates without significant visible emissions. In addition, for owners/operators with similar, separate affected facilities using identical control equipment with design potential emissions rates, considering controls, of 10 Mg (11 tons) per year or less, we are proposing to allow the permitting authority to authorize a single test as adequate demonstration for up to four other similar, separate affected facilities as long the following conditions are met: (1) The design emissions rate is less than or equal to the applicable emissions limit; (2) the individual performance test is 90 percent or less of the applicable standard; (3) the manufacturer's recommended maintenance procedures are followed for each control device; (4) each of the affected facilities operates without significant visible emissions; and (5) each affected facility conducts a performance test at least once every 5 years. Finally, we are proposing that owners/operators of affected facilities are only required to conduct performance testing every 24 months, as opposed to every 12 months, if the most recent performance test shows the affected facility emits at 50 percent or less of the applicable standard.

In the April 2008 proposal, we did not propose to require the use of PM continuous emission monitoring systems (CEMS), but added specific language directly to the regulatory text that allowed owners/operators to elect to use PM CEMS and provided incentives for them to do so by proposing to eliminate the opacity standard for owner/operators of affected facilities using a PM CEMS. Commenters suggested that by having the specific language directly in the regulatory text, we were encouraging State permitting authorities to require the use of PM CEMS, and that the costs are not justified for this source category. Other commenters suggested we require the use of PM CEMS for all units.

Based on our review of public comments and further analysis, we are no longer proposing to include the PM CEMS-specific language in the regulatory text. Non-fugitive sources at coal preparation plants are generally not significant sources of PM emissions. Further, we are not aware of any application of PM CEMS to comparable emissions sources in the United States, and we have concluded that it is unlikely that an owner/operator of a coal preparation plant would elect to install PM CEMS. In addition, owners/operators continue to have the option to request site-specific approval for the use of PM CEMS as an alternate monitoring technique.

In the April 2008 proposed rule, we proposed to require bag leak detection systems for owners/operators of thermal dryers and pneumatic-coal cleaning equipment, if the dryer or equipment uses a fabric filter installed after April 28, 2008. Based on further analysis, we are proposing to require a bag leak detection system for owners/operators of any subpart Y affected facilities with fabric filters, if the filter has a design controlled potential emissions rate of 25 Mg (28 tons) or more. For this source category, the variable operation of fabric filters makes the likely actual emissions much less than the potential emissions rate and the added expense of a bag leak detection system for smaller sources is not justified. This requirement would apply to facilities constructed, modified, or reconstructed after April 28, 2008.

F. Opacity Monitoring Requirements for Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading Systems

In the April 2008 proposed rule, we proposed the following PM monitoring requirements. Each affected facility would be required to perform an initial EPA Method 9 of appendix A–4 of 40 CFR part 60 performance test. Following the initial compliance test, three 1-hour EPA Method 22 of appendix A–7 of 40 CFR part 60 observations would be required for each affected facility at least once per calendar month that the coal preparation plant operates. If the sum of visible emissions exceeded 5 percent of the observation period, the owner/operator would be required to conduct a Method 9 performance test within 24 hours. Commenters suggested that three 1-hour observations are unduly burdensome and suggested that it would be appropriate to include a provision allowing for corrective action prior to requiring a Method 9 performance test. In addition, a commenter suggested adding a provision for the use of a continuous opacity monitoring system (COMS) as

an alternative to the Method 9 and Method 22 approach.

Based on our review of public comments and further analysis, we are proposing to change the April 2008 proposed opacity monitoring requirements for pneumatic coal-cleaning and coal handling equipment. First, we are proposing to allow the use of a COMS as an alternative to all other opacity monitoring requirements. Second, we are proposing to allow an owner/operator of an affected facility to decrease the observation period for a Method 9 performance test from 3 hours to 60 minutes if, during the initial 60 minutes of the observation of a Method 9 performance test, all the 6-minute averages are less than or equal to 3 percent and all the individual 15-second observations are less than or equal to 20 percent. Third, we are proposing to base the frequency of visible emissions monitoring on the results of the highest individual 15-second opacity observed during the most recent performance test. Owners/operators of affected facilities where the maximum 15-second opacity reading is greater than 5 percent would be required to conduct weekly Method 9 performance testing; owners/operators of affected facilities where the maximum 15-second opacity reading is 5 percent would be required to conduct monthly Method 9 performance testing; and owners/operators of affected facilities with no visible emissions would be required to conduct quarterly Method 9 performance testing.

As an alternative, owners/operators of affected facilities where the maximum 6-minute opacity reading from the most recent Method 9 performance test is less than or equal to 3 percent could elect to use either Method 22 or a digital opacity monitoring system in lieu of subsequent Method 9 performance testing. The April 2008 proposal would have required a total of three 1-hour observations monthly. We have concluded that for sources with low opacity, it is more protective to the environment and minimizes burden to industry to increase the frequency of opacity observations, but to decrease the length of each observation. When a control device is operating properly there should be minimal visible emissions and a 1-hour observation would not provide any significant additional useful information than a 10 minute observation. In addition, by requiring more frequent observations we are decreasing the time period before a malfunctioning piece of control equipment is identified. Therefore, we have concluded it is appropriate to decrease the length of each observation to a minimum of 10 minutes, but to increase the frequency to daily observations.

Further, we are proposing to base monitoring requirements for affected facilities, in part, on recent observations of visible emissions from the facilities. If no visible emissions are observed for 7 consecutive operating days, observations could be reduced to once every 7 operating days. If an owner/operator of an affected facility observes visible emissions in excess of 5 percent during any observation and is unable to take corrective action, they would be required to conduct a Method 9 performance test with the previously specified frequency. Finally, to maintain consistency in the operation of the digital opacity monitoring system, the EPA Administrator would approve opacity monitoring plans for owners/operators that elect to use the digital opacity monitoring system to detect the presence of visible emissions.

G. Electronic Reporting

We are proposing to take a step to improve data accessibility. We are proposing to require owners/operators of affected facilities at coal preparation plants to submit an electronic copy of all performance test reports to an EPA electronic data base (WebFIRE). Data entry requires access to the Internet and is expected to be completed by the stack testing company as part of the work that they are contracted to perform. This option would be required as of July 1, 2011. For performance tests not accepted by WebFIRE, we are proposing to require owner/operators to mail summary results directly to EPA.

H. Addition of Petroleum Coke and Coal Refuse to the Definition of Coal

We are proposing to amend the definition of coal for purposes of subpart Y to include petroleum coke and coal refuse. The amended definition will be used to make applicability determinations for all facilities constructed, reconstructed, or modified after May 27, 2009. This change indicates our determination that the subpart Y regulations should apply to affected facilities that prepare and process these non-traditional materials that are processed like coal.

I. Additional Amendments

We are also proposing several additional amendments. First, we are proposing to change the title of subpart Y from *Coal Preparation Plants* to *Coal Preparation and Processing Plants*. In addition, we are proposing to amend the definitions for bituminous coal, coal, coal storage system, pneumatic coal-cleaning equipment, and thermal dryer; to add definitions for anthracite, bag leak detection system, design controlled potential emissions rate, lignite, mechanical vent, operating day, potential combustion concentration, and subbituminous coal; and to delete the definition for cyclonic flow. Finally, we are proposing to exempt units that have been out of operation for at least 60 days prior to the time of the required performance test from conducting the required performance test until 30 days after the facility is brought back into operation.

III. Rationale for the Proposed Amendments

A. Additional Affected Facilities

The existing NSPS for coal preparation and processing plants establishes PM and opacity limits for thermal dryers that dry bituminous coal where the exhaust gas comes in direct contact with the coal (direct contact thermal dryers). Thermal dryers that dry non-bituminous coals, and dryers that reduce the moisture content of the coal through indirect heating using a heat transfer medium, are not presently subject to any emission standards. In the April 2008 proposal, we proposed to amend the PM limit for direct contact thermal dryers drying bituminous coal, but did not propose to establish standards for other thermal dryers. We received comments suggesting that we include indirect thermal dryers and thermal dryers drying all coal ranks as affected facilities. In addition, commenters suggested we include limits for other criteria pollutants emitted from thermal dryers.

Based on our review of public comments and subsequent analysis, in this supplemental proposal we are proposing emission standards that would apply to thermal dryers drying all ranks of coals and to both direct contact and indirect thermal dryers. We are proposing to amend the PM and opacity standards and to add both an SO_2 standard and a combined NO_X–CO standard for thermal dryers.

For indirect thermal dryers, the affected facility will include the heat source for the thermal dryer unless that heat source is subject to a boiler NSPS (*e.g.*, subpart Da, Db, or Dc). Indirect thermal dryers use a heat transfer medium to supply heat and blow air over the coal to evaporate the water. The high moisture content air is vented through a stack and the dryer exhaust contains entrained PM. If the source of heat (the source of combustion or furnace) is subject to a boiler NSPS (subpart Da, Db, or Dc) then the furnace and the associated emissions would not

be part of the subpart Y affected facility. However, if the source of heat is not subject to a boiler NSPS, then the heat source and the associated emissions are part of the subpart Y affected facility.

In situations where the heat source is part of the subpart Y affected facility and the exhaust is combined with the dryer exhaust in a single stack, the combined exhaust stack will contain all of the applicable pollutants (*i.e.*, PM, SO_2, NO_X, and CO) and all of the testing requirements would apply. However, in situations where the heat source is part of the subpart Y affected facility and the exhaust is not combined with the dryer exhaust, the subpart Y requirements would apply differently to the dryer exhaust stack and the combustion exhaust stack. The only applicable pollutant in the dryer exhaust would be PM. Therefore, the only performance test that would be required on the dryer exhaust would be for PM. However, all of the requirements of subpart Y, including the PM, SO_2, and NO_X–CO standards, would apply to the combustion exhaust stack and all of the testing requirements would apply.

In situations where the heat source is not part of the subpart Y affected facility because it is a unit covered by a steam generating NSPS (*e.g.*, 40 CFR part 60 subparts Da, Db, or Dc), the only applicable pollutant contained in the thermal dryer stack exhaust would be PM. Because the thermal dryer stack exhaust would not contain SO_2, NO_X, or CO, the SO_2 and combined NO_X–CO testing requirements would not apply.

We are proposing to establish standards that apply to direct contact and indirect thermal dryers drying all coal ranks of coal because the control technologies commonly used on thermal dryers—venturi scrubbers and fabric filters—control PM equally well regardless of the source of PM, and we have concluded that all coal thermal dryers using similar control technologies can achieve comparable emissions rates. In addition, subpart Y was originally promulgated in 1976 and additional pollution control technologies have become available since then.

Open storage piles and dust associated with roadways are potentially significant sources of fugitive PM emissions. These sources are integral parts of coal preparation plants, located on contiguous or adjacent property, and under common control. Although part of the coal preparation plant and, thus, contained within the source category listed in 1976, the existing subpart Y regulations do not set standards for emissions from open storage piles or from coal dust from roadways. In the April 2008 proposal, we requested comment on including requirements for open storage piles. We received comments both in support of and opposed to including requirements for open storage piles. In addition, we received comments in support of including requirements for the coal dust disturbed by, or released from, vehicle tires as vehicles move within the coal preparation plant. Based on our review of public comments and subsequent analysis, we have concluded that both open storage piles and vehicle tires are significant sources of potential fugitive PM emissions; however, neither operation lends itself to an emissions standard. Therefore, in this supplemental proposal we are proposing to establish work practice standards instead of an opacity or PM limit for these types of affected facilities.

B. Selection of Thermal Dryer PM and Opacity Emissions Limits

In the April 2008 proposal, we proposed to revise the PM limit for thermal dryers that dry bituminous coal from 0.070 g/dscm (0.031 gr/dscf) to 0.046 g/dscm (0.020 gr/dscf). We received comments that achieving this limit would be prohibitively expensive for modified and reconstructed units, but that the limit should be lower for new units.

Based on our review of public comments and subsequent analysis, in this supplemental proposal we are proposing separate PM limits for new, reconstructed, and modified units. As discussed in the Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260, the physical layout of existing thermal dryers makes it more expensive to reduce emissions from existing dryers than from new or reconstructed units. Therefore, we are proposing to maintain the PM limit for modified facilities at the existing 1976 limit of 0.070 g/dscm (0.031 gr/dscf). We continue to be interested in additional performance test data and information on the ability of modified units to achieve additional PM reductions beyond the present limit and are also considering establishing a lower PM standard between 0.045 g/dscm (0.020 gr/dscf) and 0.070 g/dscm (0.031 gr/dscf) for the final rule. We specifically request comment on all this range of possible standards, including 0.045 g/dscm (0.020 gr/dscf).

Because reconstructed facilities could take design options into account during the reconstruction process, we are proposing a PM limit of 0.045 g/dscm (0.020 gr/dscf) for reconstructed facilities. This level of control has been demonstrated to be consistently achievable at several existing facilities, and we have concluded that a reconstructed facility could design a PM control strategy based on conventional wet scrubbing that could achieve this emissions rate at all evaporative load rates.

As described in Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260, new thermal dryers would likely be designed as either a coal-fired recirculation thermal dryer or an indirect thermal dryer. We have determined that BDT for controlling PM emissions from these types of dryers is a fabric filter. Data collected to date demonstrates that fabric filters on such facilities can achieve emission rates of 0.004 to 0.0031 gr/dscf. As explained below, based on these data and recent permit limits for new thermal dryers using a baghouse, we are proposing a PM limit of 0.023 g/dscm (0.010 gr/dscf) and less than 10 percent opacity for new facilities. This limit would provide an adequate compliance margin for new units and is lower than the limit of 0.046 g/dscm (0.020 gr/dscf) in the April 2008 proposal. The April 2008 proposed limit, however, would have applied to new, reconstructed and modified facilities.

It is important to note that although the standard is based on the use of a fabric filter, a new facility would not be required to use any specific control technology. Our analysis demonstrates that a new facility could use a once-through dryer design and achieve the proposed standard using a wet scrubber to control PM emissions. We identified two wet-control approaches that an owner/operator of a new facility could use to achieve this limit. The first approach is to use a high-energy venturi scrubber. We analyzed the incremental cost effectiveness of the increased pressure drop necessary to achieve the proposed PM limit for a model thermal dryer (see Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260). The incremental control cost of using venturi scrubbers ranged from $3,100/ton for an emission level of 0.020 gr/dscf to $16,000/ton for an emission level of 0.0050 gr/dscf.

Based on this analysis, we concluded that an emissions rate of 0.023 g/dscm (0.010 gr/dscf) would be cost effective for a new thermal dryer using a high-energy venturi scrubber to control PM emissions, even in the absence of a baghouse or electrostatic precipitator (ESP). We recognize that no recent coal-fired thermal dryer has been constructed and that this level of control has not yet been demonstrated on a subpart Y affected facility with wet controls. This level of control, however, has been

demonstrated at comparable, recently constructed facilities (see Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260). A venturi scrubber, moreover, is not the only wet control strategy an owner/operator could use to control PM emissions. To decrease power requirements, a low pressure tray scrubber could be used to remove the majority of the PM emissions, and then either a wet ESP or cloud chamber could be used to remove the remaining fine PM. Both a wet ESP and cloud chamber have demonstrated an ability to control PM emissions to below 0.023 g/dscm (0.010 gr/dscf). Thus, although wet scrubbing is not considered BDT for controlling PM emissions from new thermal dryers, the proposed level of PM control would be achievable using wet control approaches, such as a wet scrubber.

C. Selection of Thermal Dryer SO_2, NO_X, and CO Emissions Limits

SO_2 emissions from a thermal dryer are a function of the sulfur content of the fuel burned in the dryer. However, measured SO_2 emissions are often less than what would be theoretically predicted based on the sulfur in the fuel burned assuming all of the sulfur in the fuel is emitted as SO_2. There are two possible reasons for this discrepancy: Either SO_2 emissions are reduced by the wet scrubber installed to control PM or a portion of the $S0_2$ is adsorbed as sulfuric acid into the pores of the coal being dried (due to the reaction of the SO_2 with oxygen in the flue gas). Emissions data for SO_2 controls from coal-fired thermal dryers are limited, and at this time it is not possible for us to determine the full extent to which each mechanism is reducing emissions. Based on the emissions data from other sources using venturi scrubbers primarily for PM control, it appears that the majority of SO_2 control occurs as a co-benefit of the wet scrubber. The measurements of SO_2 emissions from thermal dryers with wet scrubbers collected for this review range from 0.02 to 1.9 lb/MMBtu and, for the sources reporting removal efficiencies, overall control efficiencies range from 50 to 98 percent.

Existing facilities presently use two techniques to specifically control SO_2 emissions. The first approach is to spray a caustic solution (*e.g.*, sodium hydroxide, NaOH) on the coal before it enters the drying chamber. The caustic reacts with the SO_2 in the drying chamber and forms a salt (sodium sulfate, Na_2SO_4) that is collected in the PM control device. The other approach is to add caustic directly to the wet scrubber fluid and control SO_2 along with PM. Wet scrubbers designed specifically for SO_2 control are able to achieve greater than 95 percent reduction. However, the wet scrubbers used on existing thermal dryers are designed for PM control and not specifically for SO_2 control. Therefore, high levels of SO_2 control are likely to be difficult to achieve without redesign of the scrubber (*e.g.*, different construction materials to handle the corrosion resulting from use of the caustic solution, scaling deposits, and plugging of liquid lines). Nonetheless, if scaling deposit and plugging of liquid lines were a concern, an owner/operator using a wet scrubber to control SO_2 could switch to newer scrubbing agents with a higher solubility, such as calcium magnesium acetate. Based on the performance of one existing facility and analysis of other venturi scrubbers used to control SO_2 emissions, we have concluded an existing thermal dryer with a wet scrubber could achieve 90 percent reduction without a significant redesign.

As discussed previously, we have concluded that BDT for controlling PM from a new thermal dryer is a fabric filter. PM has historically been the primary pollutant of concern for subpart Y affected facilities. Therefore, in analyzing BDT for SO_2 control, we considered the incremental cost of controls to reduce SO_2 emissions from thermal dryers with fabric filters.

Adding a wet scrubber for the sole purpose of controlling SO_2 emissions beyond 50 percent control (*i.e.*, to achieve an additional 40 percent control) has an incremental cost of over $5,000/ton of SO_2 controlled (see Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260). This high cost is partially due to the fact that most thermal dryers are not typically large, ranging from 100 to 200 MMBtu/hr, and are not major sources of SO_2 emissions; these factors result in the fixed costs of scrubbing units being high for smaller facilities. In addition to the high costs, facilities with wet scrubbers must dispose of the scrubber sludge. For these reasons, we have concluded that wet scrubbers are not a cost-effective control technology, and are not BDT for this source category.

For a lower cost option, we evaluated the use of dry sorbent injection or spraying caustic on the coal prior to the drying chamber. The caustic approach is presently used at one facility, and the salt produced is removed by the PM control device. We do not have detailed information on the contribution of each mechanism on overall SO_2 control. However, if we assume the same absolute amounts, in lb/MMBtu, are controlled by absorption onto the coal and as a co-benefit of the venturi scrubber, as described in the Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260, the caustic spray is achieving approximately 50 percent reduction in theoretical SO_2 emissions. We have not identified any facilities which apply sorbent injection to a thermal dryer, but it has been applied to industrial and utility boilers, and the technology is directly transferable to coal-fired thermal dryers. Various companies supply calcium- and sodium-based sorbent reagents, and the technology can be used at any facility with injection locations, sufficient residence time, and a suitable temperature range. A new thermal dryer could be designed to include an injection site into the combustion gases above the burners and prior to the drying chamber. An advantage of using sorbent injection in combination with a baghouse is that the sorbent forms a cake on the bags and increases SO_2 control. Sorbent SO_2 control efficiencies vary between 30 and 60 percent for calcium-based agents and can be as high as 90 percent for sodium-based agents. Higher levels of control have been achieved in boilers with sorbent injection, but this control has not been applied to thermal dryers and we have concluded that 50 percent would be a reasonable expectation. Higher percent reductions would be technically achievable with the addition of more sorbent, but incremental costs would increase. The cost per ton of SO_2 controlled using sorbent injection is approximately $1,000 per ton and is considered cost effective for this source category.

For the reasons described above, we have concluded that dry sorbent injection into the thermal dryer and spraying caustic onto the coal prior to the thermal dryer are both BDT for SO_2 reduction from new, modified, and reconstructed thermal dryers. Also for the reasons described above, we have concluded that a 50 percent SO_2 reduction is the standard that can be achieved by the application of BDT for controlling SO_2 emissions to a thermal dryer. This standard reflects the degree of emissions reduction achievable by the technology available and provides an adequate compliance margin for both sorbent injection into the thermal dryer and caustic spraying onto the coal prior to the drying chamber.

We are also proposing to establish a maximum emission rate of 520 ng/J (1.2 lb/MMBtu). We believe it is appropriate to establish this upper limit, in addition to the 50 percent reduction requirement, because control is easier and more cost-

effective at high pollutant concentrations. Adding a wet scrubber to strictly control SO_2 emissions for thermal dryers with an actual stack emissions rate of 520 ng/J (1.2 lb/MMBtu) or more has an incremental cost of less than $3,000/ton of SO_2 controlled and is considered cost-effective for this source category.

Finally, our analysis also demonstrates that facilities with lower SO_2 emission rates may not be able to consistently achieve design rate percent reduction efficiencies because control is more technically difficult at lower pollutant concentrations. For this reason we are setting a lower, alternate limit of 85 ng/J (0.20 lb/MMBtu). A source that can meet the lower alternate limit does not also need to demonstrate that it is reducing SO_2 emissions by a specified percent. This approach is consistent with the approach used in the NSPS for steam generating units, 40 CFR part 60, subparts Da, Db, and Dc. We continue to be interested in additional SO_2 performance test data from thermal dryers and comparable facilities using caustic sprays, sorbent injection, and scrubbers to control SO_2 emissions and are currently considering an SO_2 percent reduction requirement of between 50 and 90 percent for the final rule.

We are also proposing to add a combined NO_X and CO emission limit for thermal dryers. As explained below, we have determined that advanced combustion controls are BDT for both NO_X and CO emissions from thermal dryers. Such controls can achieve both low NO_X and CO emissions. In addition, the pollutant emissions rates are related. NO_X reduction techniques that rely on delayed combustion and lower combustion temperatures tend to increase incomplete combustion and result in a corresponding increase in CO and volatile organic compound (VOC) emissions. To account for variability in combustion properties and to provide additional compliance strategy options for the regulated community, while still providing an equivalent level of environmental protection, we are proposing to establish a combined NO_X and CO limit. The combined limit for modified and reconstructed units would be 520 ng/J (1.0 lb/MMBtu). This level has been demonstrated as being achievable for existing units (see Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260). The combined limit for new sources would be 280 ng/J (0.65 lb/MMBtu). For new units, we evaluated what emission limits could be achieved by application of BDT for both NO_X and CO, and relied on this evaluation to develop the combined standard. We have previously established combined emissions limits for pollutants that are inversely related in the NSPS for stationary compression ignition internal combustion engines, 40 CFR part 60, subpart IIII.

We continue to be interested in additional NO_X and CO performance test data from thermal dryers and comparable facilities using combustion controls to control both NO_X and CO emissions and are also considering, and requesting comment on, a combined limit of between 390 ng/J (0.90 lb/MMBtu) and 470 ng/J (1.1 lb/MMBtu) for modified and reconstructed units and between 200 ng/J (0.47 lb/MMBtu) and 300 ng/J (0.70 lb/MMBtu) for new units. In addition, we are continuing to consider separate limits and specifically request comment on whether a combined limit is appropriate.

To determine the NO_X and CO emission reductions achievable from the application of BDT to thermal dryers, we examined the nature of the emissions, demonstrated control technologies, and the removal efficiencies of those technologies. NO_X emissions from coal thermal dryers primarily occur via two mechanisms. The main source, thermal NO_X, is formed when nitrogen and oxygen in the combustion air react at high temperatures. Fuel NO_X is due to the reaction of fuel-bound nitrogen compounds with oxygen. NO_X emissions can be minimized through two general control strategies: combustion controls and post-combustion controls. Combustion controls limit the formation of NO_X, whereas post-combustion controls convert NO_X to nitrogen and oxygen prior to release to the atmosphere. We are not presently aware of any coal-fired thermal dryers that use post-combustion controls.

Post-combustion controls include selective catalytic reduction (SCR), selective non-catalytic reduction (SNCR), non-selective catalytic reduction (NSCR), and catalytic oxidation/absorption ($SCONO_X$). For reasons presented in the Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260, none of these control options are technically feasible control options for a thermal dryer and they were not evaluated as viable control technologies. However, we continue to be interested in additional information that would indicate if SNCR could be successfully integrated into a new thermal dryer and specifically request comment on this issue. At this time, we have determined that combustion controls are the only viable NO_X controls identified that could be used across the range of thermal dryers presently used in the United States and, thus, we have determined that combustion controls constitute BDT for NO_X emissions from thermal dryers. Available combustion controls include low NO_X burners (LNB), staged combustion, co-firing with natural gas or liquefied petroleum gas (LPG), and flue gas recirculation (FGR). These control options are described in the Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260.

The practical operating range of existing thermal dryers is relatively small, and redesign of the thermal dryer would be required to obtain significant NO_X reductions. However, we have identified several existing thermal dryers that have demonstrated NO_X emissions of less than 0.60 lb/MMBtu. Our analysis demonstrates that existing facilities could achieve this limit through combustion controls alone.

Our analysis demonstrates that new thermal dryers could be constructed to comply with a NO_X limit of 170 ng/J (0.40 lb/MMBtu). Although utility-size units burning bituminous coal can achieve NO_X limits of less than 130 ng/J (0.30 lb/MMBtu), NO_X-reducing technologies for smaller thermal dryers are more limited. We reviewed permits issued over the past decade and only found NO_X requirements for boilers less than 250 MMBtu/hr for six new comparable small coal-fired boilers. Three were circulating fluidized bed (CFB) boilers, a design that is not generally used in dryers. Permit conditions for the other three boilers were 110, 170, and 300 ng/J (0.25, 0.40, and 0.70 lb/MMBtu). The highest permit limit had a corresponding low CO standard, which could explain the unusually high NO_X standard. This NO_X emissions rate could be achieved for either a new stoker or pulverized coal-based thermal dryer using combustion controls alone. Furthermore, we reviewed data developed by State permitting authorities which list combustion controls as able to cost effectively achieve over 50 percent reduction for coal-fired industrial boilers from an uncontrolled emissions rate of 300 ng/J (0.70 lb/MMBtu). The cost per ton of NO_X controlled using combustion controls is less than $2,000 per ton and is considered cost effective for this source category.

CO emissions are intermediate products produced by the incomplete combustion of hydrocarbons. The emissions are formed in hot, oxygen-depleted regions of the combustion chamber and at the edges of the lean flame zone where the temperature is lower. Short residence times also contribute to CO formation. During

complete combustion, CO reacts with various oxidants to form carbon dioxide (CO_2) through recombination reactions. However, these recombination reactions cannot proceed to completion if the combustion temperature is low or there is a deficient amount of oxidants in the combustion gas. VOC emitted from thermal dryers are a result of both incomplete fuel combustion and volatile matter released from the coal bed as it is heated and dried.

Controls to minimize both CO and VOC include thermal oxidation and flaring, catalytic oxidation, catalytic incineration, and good combustion practices. For reasons presented in the Thermal Dryer Memo in Docket EPA–HQ–OAR–2008–0260, thermal oxidation and flaring, catalytic oxidation, and catalytic incineration are not technically feasible control options for a thermal dryer, and they were not evaluated as viable control technologies. In addition, high levels of excess air can be used to control CO emissions and VOC absorbers can be used to control VOC emissions. However, high levels of excess air increase NO_X emissions and the PM emissions in a thermal dryer exhaust would plug the pores in the absorber bed; therefore, such controls are also not considered to be a viable control techniques. For these reasons, we conclude that good combustion practices constitute BDT for CO emissions from thermal dryers.

Good combustion practices limit the formation of CO and VOC by providing sufficient oxygen in the combustion zone for complete combustion to occur. Based on a review of CO emissions rates from existing thermal dryers, we are basing the combined NO_X and CO limit on a CO emissions rate of 190 ng/J (0.45 lb/MMBtu) for modified and reconstructed thermal dryers. We have identified several existing thermal dryers that are achieving this emissions rate with combustion controls alone. Because we have not identified a method for control of VOC emissions beyond combustion controls, we are not proposing a separate limit for VOC emissions. However, by setting an emissions limit that contains a CO emissions rate, we are minimizing the VOC emissions that result from incomplete combustion. The VOC emissions from the coal bed itself are variable, and we concluded that we are unable to set a standard that would be achievable for variable coal types across the country.

For new thermal dryers, we concluded that a CO emissions rate of 110 ng/J (0.25 lb/MMBtu) is the appropriate rate to use as part of the basis for the combined NO_X and CO limit. Although new utility-sized units can reduce CO emissions to 0.15 lb/MMBtu, technologies are more limited for the smaller thermal dryers. However, because new thermal dryers would likely use a gas recirculation design, both VOC and CO emissions would be minimized. The exhaust gases would be recirculated to the high temperatures of the combustion chamber and would oxidize some of the emissions to CO_2 and water. Of the three non-CFB permits for small coal-fired boilers, the requirements over the past decade were 0.02, 0.21, 0.23 lb/MMBtu. We also reviewed information on coal-fired boilers developed for State permitting agencies, and the basis limit for CO is consistent with the values listed in those references. In addition, we reviewed the CO data collected for coal-fired industrial boilers in support of the Clean Air Act (CAA) section 112 maximum achievable technology (MACT) standards. Of the 60 industrial boilers with CO emissions listed in lb/MMBtu, the average was 40 ng/J (0.095 lb/MMBtu), and the range was 0.1 to 230 ng/J (0.0002 to 0.54 lb/MMBtu). At this time, we do not have the corresponding NO_X emissions data to determine if the low CO emissions rates have a corresponding high NO_X emissions rate. These data indicate that 92 percent of existing small coal-fired boilers are achieving a rate of 110 ng/J (0.25 lb/MMBtu) and 98 percent are achieving a rate of 190 ng/J (0.45 lb/MMBtu).

D. Selection of Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading System PM and Opacity Limits

We are proposing standards for a wide variety of coal handling equipment. For open storage piles and roadways, we are proposing, consistent with CAA section 111(h), to establish work practice standards. For other coal handling equipment, including pneumatic coal-cleaning equipment, coal processing and conveying equipment, coal storage systems, and transfer and loading systems, we are establishing PM and/or opacity emission limits.

1. Open Storage Piles and Roadways

CAA section 111(h) provides that if, in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, EPA may among other things, promulgate work practice, design, or equipment standards. A determination that the emissions from the sources cannot be measured due to technological or economic limitations may be used to support a determination that it is not feasible to establish standards of performance. It is difficult and prohibitively expensive to measure actual PM emissions from individual open storage piles or roadways. Further, the size of open storage piles and the mobile nature of coal dust from vehicle tires on roadways make the use of Method 9 opacity observations unreasonable in many situations. For these reasons, the Administrator is proposing to determine that it is not feasible to establish an emissions standard for open storage piles or the coal dust associated with roadways. This determination would support the proposed work practice standards outlined below.

Based on that proposed determination, we are proposing to establish the following work practice standards for open storage piles and coal dust from roadways. We propose to require owners/operators of open storage piles and roadways associated with coal preparation plants to develop and comply with a fugitive dust emissions plan to control fugitive PM emissions. These fugitive dust plans would be required to contain the elements described below.

For open storage piles, we are proposing to require the fugitive dust plan to prescribe the use of an enclosure, chemical suppressants (including encrusting agents), wet suppression, a wind barrier, or a vegetative cover to control emissions.

We are also proposing to require that the fugitive dust plan include procedures for limiting emissions from all types of ''coal processing and conveying equipment'' at a coal preparation plant. Although the source category listing covers the entire coal preparation plant, we have not previously established emission limits for all facilities located at the plant. Because open storage piles were not previously considered affected facilities, unloading and conveying operations to an open storage pile were also not regulated. Only unloading operations that were directly loaded into receiving equipment were subject to an opacity limit. Because we are proposing to include open storage piles as an affected facility, the loading, unloading, and conveying operations of open storage piles would also be covered under the fugitive dust emissions control plan, but not subject to an opacity limit.

Open storage piles also include piles of coal that have been loaded into trucks, railcars, and/or ships. At this time, we are not proposing to require that the fugitive dust emissions control plan address emissions from these piles.

We identified two potential control options for these piles: covers and chemical encrusting agents. However, we have determined it is not practical to require these controls. First, the majority of fugitive emissions occur while the coal is in transit outside the physical boundaries of the coal preparation plant. The emissions from the piles while they are at the coal preparation plant have not been shown to be significant. Second, it would not be economically feasible to require end users to cover the coal or spray chemical suppressants as the coal arrives on the property of the owner/operator and then proceed to unload the coal.

We are also proposing to require that the permitting authority approve the fugitive dust plans required by this subpart and to grant specific authority to the permitting authority to approve alternate technologies to control fugitive emissions from open storage piles and coal dust from roadways. The permitting authority may approve the use of such alternative technologies in the fugitive dust plan if it has determined that the approved technology provides equivalent overall environmental protection.

For roadways, we are proposing to require that the fugitive dust plan require the owner/operator to pave the roads, wet the road surface, sweep up excess coal dust, or install tire washes to remove entrained dust to control PM emissions. For roadways that do not leave the property (*e.g.*, haul roads at coal mines), the owner/operator of the coal preparation plant would not have to include such requirements in the fugitive dust plan because of the particular impracticality of, for example, paving roadways that are frequently re-routed.

2. Coal Handling Equipment

In the April 2008 proposal, we concluded that a fabric filter was BDT for controlling PM emissions from coal-handling equipment processing subbituminous and lignite coals. That determination provided the basis for the proposed PM and opacity standards, and also for our proposal requiring that coal-handling equipment processing subbituminous and lignite coals be vented (i.e., connected to a duct or stack) such that a PM performance test could be conducted on the contained exhaust gas stream. As discussed more fully in the Coal Handling Memo in Docket EPA–HQ–OAR–2008–0260, multiple commenters disagreed with our BDT determination for several reasons. First, they noted that the use of baghouses to collect subbituminous coal dust presents potential safety concerns. For this reason alone, the commenters argued that EPA should not use a baghouse as the basis for the emissions rate. Second, their comments noted that although the use of baghouses frequently results in low stack grain loadings, the practice of returning the collected dust to the conveyor belt may cause potential problems with fine coal dust emissions later in the coal handling process, decreasing their overall effectiveness. Finally, commenters identified multiple State best available control technology (BACT) determinations that allow sources to remove existing baghouses and replace them with passive enclosure containment systems (PECS), fogging systems, or wet extraction scrubbers. Neither PECS nor fogging systems can be vented, so the requirement to conduct a PM performance test conflicts with such State BACT determinations.

Based on our review of public comments and subsequent analysis, we have concluded that a baghouse is not the only technology that is BDT for coal-handling equipment used on subbituminous and lignite coals. Depending on the plant-specific circumstances, all four technologies (fabric filters, PECS, fogging systems, and wet extraction scrubbers) can control PM emissions equally well. They all provide equivalent levels of emissions reductions; in addition, fogging systems, PECS, and the wet extraction systems often have lower costs than baghouses. For this reason, we are no longer proposing to require that all emissions from such facilities be vented and are proposing PM and opacity limits for coal-handling operations based on the level of reduction achievable by these four technologies.

In the April 2008 proposal, we also determined that the use of chemical suppressants was BDT for coal-handling equipment processing bituminous coal. This determination also provided a basis for the proposed PM and opacity limits. Multiple commenters disagreed with that determination, stating that wet suppression is often used to control fugitive PM from coal-handling operations processing bituminous coal and that this control approach results in limited visible emissions from the operation.

Based on our review of public comments and subsequent analysis, we have reaffirmed our determination that BDT for coal-handling equipment processing bituminous coal is the use of chemical suppressants. The proposed opacity limit is based on that BDT determination. However, it is important to note that although our BDT analysis identifies a specific technology as BDT, the actual requirement in the rule is an opacity limit, and an owner/operator can use any combination of controls at a particular site as long as it demonstrates compliance with the opacity limit. The owner/operator is not obligated to use the specific technology identified as BDT.

Since the April 2008 proposal, we have performed an extensive data-gathering effort for both PM performance test data and opacity observations (both Method 9 and Method 22) on recently installed coal-handling equipment. This data gathering is discussed in more detail in the Coal Handling Memo in Docket EPA–HQ–OAR–2008–0260.

In the April 2008 proposal, we proposed to establish a PM limit of 0.011 g/dscm (0.0050 gr/dscf) for coal-handling equipment processing subbituminous and lignite coals. We also proposed to require that all such equipment vent emissions such that mass PM emissions from the facility could be measured. Multiple commenters disagreed with the PM limit, saying that it is technically difficult to achieve at some locations and is more stringent than the BACT determinations from multiple State permitting authorities. In addition, commenters suggested we collect more PM emissions data specific to coal handling operations.

As described earlier, we have reconsidered our prior BDT determination and are now proposing a determination that any of four technologies—fabric filters, PECS, fogging systems, and wet extraction scrubbers—may be BDT, and we are establishing PM and opacity limits consistent with that determination. Only the fabric filter technology and wet extraction scrubbers are typically vented; PECS and fogging systems technologies rely on reduced air flow and as such could not be used if emissions are vented. Requiring venting of either PECS or fogging systems would conflict with the design criteria of both approaches. In this proposal, we are proposing to establish both PM and opacity limits that would apply to all emissions that are vented, and an opacity limit that would apply to all emissions that are not vented.

Based on our review of public comments and subsequent analysis, we are proposing a change from the April 2008 proposed PM limit of 0.011 g/dscm (0.0050 gr/dscf) to 0.023 g/dscm (0.010 gr/dscf). The PM performance test data specific to coal-handling equipment ranged from 0.001 to 0.011 gr/dscf. Based on the performance test data, we

have concluded that although 0.011 g/dscm (0.0050 gr/dscf) has been shown to be achievable, due to the limited data set, we are not convinced that such a limit would be achievable on a long-term basis for all affected facilities across the country. However, we have concluded that 0.023 g/dscm (0.010 gr/dscf) is achievable for all sizes of affected facilities and provides an adequate compliance margin to be consistently achievable on a long-term basis for control technologies that are vented through a stack. As shown in docket entries EPA–HQ–OAR–2008–0260–0003.1 (''Discussion of Particulate Matter Control Concepts for Coal Handling NSPS'') and -0035.1 (''Comments of the Utility Air Regulatory Group''), this standard is also consistent with the majority of recently issued permits.

We continue to be interested in additional performance test data from recently installed fabric filters and wet extraction scrubbers and are requesting comment on a PM standard of 0.020 g/dscm to 0.025 g/dscm (0.0090 gr/dscf to 0.011 gr/dscf) for the final rule. All the PM performance test data collected for this supplemental proposal show emissions equal to or less than 0.025 g/dscm (0.011 gr/dscf). However, the source with the highest PM emissions concentration has permit requirements in lb/hr of PM emissions and the design emissions rate of those fabric filters is unclear. All of the other PM performance test data, including the individual tests runs, are below 0.020 g/dscm (0.0090 gr/dscf).

In the April 2008 proposal, we proposed to amend the opacity limit for coal-handling equipment from the existing 1976 limit of less than 20 percent to less than 5 percent. Multiple commenters opposed that proposal for several reasons. First, the data used for the proposal were largely based on data collected from the nonmetallic minerals processing industry. In addition, commenters noted that because individual Method 9 opacity observations are made in increments of 5 percent, a less than 5 percent opacity limit would mean that the presence of any visible emissions would result in a violation. Commenters asserted that it would be difficult to guarantee that each affected facility will operate with no visible emissions at all times. Also, because the proposed standard is based on a 6-minute reading, there would be no opportunity for an owner/operator to fix a problem prior to being in violation of the standard. Further, because opacity from fugitive sources is more difficult to measure than from point sources, they argued that the less than 5 percent limit was unreasonable.

It is important to note that the April 2008 proposed limit of less than 5 percent opacity is not the same as a no visible emissions limit. A Method 9 performance test is conducted by taking one or more sets of 24 observations at 15-second intervals over a 6-minute period. Each observation is reported in 5 percent increments. The 6-minute average is calculated by averaging all observations made over the 6-minute period. Thus, a 6-minute average based on both 0 and 5 percent opacity readings (or higher), would not exceed the 5 percent standard as long as the average is less than 5 percent. In contrast, a ''no visible emissions'' limit for a Method 9 performance test would require all opacity readings to be 0 percent.

Nonetheless, based on our review of public comments and subsequent analysis, in this supplemental proposal we are proposing to change the opacity limit for all subpart Y coal-handling facilities to no greater than 5 percent. We gathered data on coal-handling operations at 25 coal preparation plants, and the reported highest 6-minute average opacity reading was 5 percent for a recently installed facility. Therefore, we have concluded that this is an appropriate opacity limit for new sources.

We are also specifically requesting comment on whether an opacity limit of less than 10 percent is more appropriate than a limit of no greater than 5 percent. The data we collected were primarily from initial compliance tests, and we are requesting comment on whether the 5 percent limit is achievable on a long-term basis for all subpart Y coal-handling facilities under all operating conditions, including windy dry periods, and whether the limit provides an adequate compliance margin. We are also requesting comment on establishing different opacity limits for each type of coal-handling operation.

Finally, we are proposing to require periodic Method 9 performance tests to assure compliance with the no greater than 5 percent standard. However, to create an incentive for sources to operate with minimal visible emissions (visible emissions readings less than 5 percent of the time using Method 22) whenever possible, we are proposing to allow owners/operators of facilities with the most recent Method 9 performance test of 3 percent or less opacity to qualify for reduced monitoring requirements. Owners/operators of affected facilities operating with minimal visible emissions would be able to elect to perform periodic short opacity observations using Method 22 as an alternative to Method 9 performance tests. Facilities with visible emissions would have to perform periodic Method 9 performance tests and, therefore, would have an incentive to operate without visible emissions. We believe it is important to provide these incentives because the data we have gathered suggest that many affected facilities should be able to operate with zero opacity much of the time if they are being properly operated and maintained.

E. Selection of Monitoring Requirements

In the April 2008 proposal, we proposed to require initial and annual PM performance testing for each subpart Y affected facility with an emissions limit. After further consideration, and for the reasons explained below, we have concluded that it would be more appropriate to require testing every other year of affected facilities operating at 50 percent or less of the applicable limit and reduced testing requirements for facilities with relatively low potential emissions.

Reducing the frequency of compliance testing from annual to every other year for owner/operators of affected facilities operating at 50 percent or less of the applicable limit both reduces compliance costs and could provide benefits to the environment by recognizing the environmental benefit of owners/operators installing controls beyond what is required by the NSPS. By reducing monitoring requirements, we are recognizing the increased environmental benefit of control equipment that is both designed and operated in such a manner to exceed the new source performance requirements and are incentivizing the development of improved control technology. Also, if an affected facility is tested as operating well below the standard, there is less of a chance of exceeding the limit.

For smaller facilities with lower potential emissions, we have concluded the cost of the testing proposed in the April 2008 proposal is not justified by the information that would be gained from the testing. In addition, we are not aware of an economically feasible way to measure PM emissions from vent filters. Vent filters are typically smaller than 2,000 actual cubic feet per minute (acfm), and the exemption for affected facilities with potential emissions of less than 1.0 Mg (1.1 tons) equates to 2,800 standard cubic feet per minute (scfm) at a design emissions rate of 0.010 gr/dscf. Furthermore, smaller baghouses often do not come equipped with sampling access. It would cost approximately $6,000 to add sampling

ports and sampling platforms to each baghouse. Considering that baghouse operations are often intermittent, potential emissions from deterioration over time are expected to be low. Instead of requiring annual performance tests, we are proposing to require that each baghouse be monitored for visible emissions on an ongoing basis. We have concluded that these visual observations should detect significant problems such as holes and tears in the filter medium or if the filter becomes unseated. Under these circumstances, visible emissions will increase dramatically because part of the exhaust gas is emitted directly to the atmosphere without any emissions reduction, resulting in readily apparent visible emissions.

Similarly, for an owner/operator of up to five affected facilities of the same type using identical control equipment with potential annual emissions of less than 10 Mg each at a coal preparation plant, we are proposing to allow a performance test on a single affected facility as a check on the compliance of all of the affected facilities with the emissions standard. We are allowing this option only where performance test results are 90 percent of the standard, the design emissions rate of the control device is less than or equal to the applicable emission limit, and each affected facility is tested at least once every 5 years. The facilities must perform the applicable ongoing monitoring, and adhere to manufacturer's recommended maintenance procedures. We concluded that for these sources the test results at one control device will likely be representative of other similar control devices, and that the additional compliance costs associated with testing each affected facility would not result in significant emissions reductions.

We are proposing to require bag leak detection systems for large baghouses. We considered, but decided against, requiring installation and use of a bag leak detection system at each affected facility using a fabric filter to control PM. These detectors are useful and effective for early detection of bag leaks; however, the capital costs of a bag leak detection system can be as much as $24,000 and the annualized costs might be as much as $7,000 (including capital recovery). These costs are considered unjustifiably high for smaller baghouses with low potential emissions at subpart Y affected facilities. Because potential PM emissions from a bag leak are more significant for larger baghouses, we are proposing to require a bag leak detection system for owners/operators of baghouses with a potential annual emissions rate of 25 Mg (28 tons) or more. This equates to a baghouse of approximately 70,000 scfm with a design emissions rate of 0.010 gr/dscf, or 140,000 scfm with a design emissions rate of 0.0050 gr/dscf.

F. Selection of Opacity Monitoring Requirements for Pneumatic Coal-Cleaning Equipment, Coal Processing and Conveying Equipment, Coal Storage Systems, and Transfer and Loading System

In the April 2008 proposal, we proposed to require three 1-hour Method 22 observations to monitor for visible emissions at all coal-handling affected facilities. With this approach an owner/operator could perform the initial readings on the first day of the month and not perform a subsequent observation for 30 days. When a control device is operating properly there should be minimal visible emissions and a 1-hour observation would not provide any significant additional useful information than a 10-minute observation. In addition, allowing extended periods of operation between observations could allow as much as 30 days before a malfunctioning piece of control equipment is identified. Therefore, we have concluded it is appropriate to decrease the length of each observation to a minimum of 10 minutes, but to increase the frequency to daily observations. By taking more frequent observations, we assure that control equipment is consistently well operated.

G. Required Electronic Reporting

We are also proposing to require owners/operators to submit compliance test data electronically to EPA. Compliance test data are necessary for compliance determinations and for EPA to conduct 8-year reviews of CAA section 111 standards. The data are also used for many other purposes such as developing emission factors and determining annual emission rates. In conducting 8-year reviews, EPA has found it burdensome and time-consuming to collect emission test data because the data are often stored at varied locations through differing storage methods. One improvement in recent years is the availability of stack test reports in electronic format as a replacement for paper copies. The proposed option to submit source test data electronically to EPA would not require any additional performance testing. In addition, when a facility submits performance test data to WebFIRE, there would be no additional requirements for data compilation; instead, we believe industry would greatly benefit from improved emissions factors, fewer information requests, and better regulation development as discussed below. Because the information that would be reported is already required in the existing test methods and is necessary to evaluate conformance to the test method, facilities would already be collecting and compiling these data. One major advantage of electing to submit source test data through the Electronic Reporting Tool (ERT), which was developed with input from stack testing companies (who already collect and compile performance test data electronically), is that it would provide a standardized method to compile and store all the documentation required by this rule. Another important benefit of submitting these data to EPA at the time the source test is conducted is that it will substantially reduce the effort involved in data collection activities in the future. Specifically, because we would already have adequate source category data to conduct NSPS reviews, there would be fewer data collection requests (e.g., letters issued under the authority of CAA section 114). This results in a reduced burden on both affected facilities (in terms of reduced manpower to respond to data collection requests) and EPA (in terms of preparing and distributing data collection requests). Finally, another benefit of electronic data submission is that these data will greatly improve the overall quality of existing and new emissions factors by supplementing the pool of emissions test data upon which a particular emission factor is based, and by ensuring that the data are more representative of current industry operational procedures. A common complaint from industry and regulators is that emissions factors are outdated or not representative of a particular source category. Additional performance tests results would ensure that emissions factors are updated more frequently and are more accurate. In summary, receiving the test data already collected for other purposes and using them in the emissions factors development program will save industry, State/local/tribal agencies, and EPA time and money.

Data would be submitted electronically to the EPA database WebFIRE, which is a Web site accessible through the EPA TTN. The WebFIRE Web site was constructed to store emissions test data for use in developing emission factors. A description of the WebFIRE database can be found at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main*. The ERT is an interface program that transmits the

electronic report through EPA's Central Data Exchange (CDX) network for storage in the WebFIRE database. Although ERT is not the only electronic interface that can be used to submit source test data to the CDX for entry into WebFIRE, it is the most straightforward and easy way to submit data. A description of the ERT can be found at *http://www.epa.gov/ttn/chief/ert/ert_tool.html*. The ERT can be used to document the conduct of stack tests data for various pollutants, including PM (EPA Method 5 in appendix A–3), SO_2 (EPA Method 6C in appendix A–4), NO_X (EPA Method 7E in appendix A–4), CO (EPA Method 10 in appendix A–4), cadmium (Cd) (EPA Method 29 in appendix A–8), lead (Pb) (Method 29), mercury (Hg) (Method 29), and hydrogen chloride (HCl) (EPA Method 26A in appendix A–8). The ERT does not currently accept opacity data or CEMS data.

H. Addition of Petroleum Coke and Coal Refuse to the Definition of Coal

Petroleum coke and coal refuse are useful boiler fuels, have similar PM emissions as primary coals, and the same equipment is used to control PM emissions from the handling of primary coals, petroleum coke, and coal refuse. Therefore, we are proposing to amend the definition of coal in subpart Y to include petroleum coke and coal refuse (after May 27, 2009). The standards in the original 1976 subpart Y were based on data from coal preparation plants processing bituminous coal at mines. However, the original applicability of subpart Y was intentionally broad, and covered processing of all coal ranks and coal processing at end-user locations (owner/operators of boilers, coke ovens, etc.), as the mechanical processing of coal is the same regardless of location.

Petroleum coke, a carbonaceous material, is a by-product residual from the thermal cracking of heavy residual oil during the petroleum refining process. Petroleum coke has a superior heating value and low ash content compared to coal. However, depending on the original crude feedstock, it may contain greater concentrations of sulfur and metals, making it less attractive as a boiler fuel. Historically, petroleum coke has been priced at a discount compared to coal. Because of the increased use of heavier crudes and more efficient processing of refinery residuals, U.S. and worldwide production of petroleum coke is increasing and is expected to continue to grow.

Coal refuse, a by-product of coal mining and cleaning operations, is generally a high ash (non-combustible rock), low Btu material. It is cost-prohibitive to transport because of the weight per amount of energy that can be extracted, and is usually burned close to the point of generation. Large volumes of coal refuse began to accumulate at mining sites when mining first began in the Appalachians in the 1970s. Current mining operations continue to generate coal refuse; estimates show that up to 1 billion tons of coal refuse were generated in 2007 alone. When subpart Y was originally published in 1976, there was no way to cost-effectively dispose of coal refuse. Also, laws requiring the stabilization and reclamation of mining sites were not established until the late 1970s, after subpart Y was originally promulgated. After the late 1970s, mining operations began to process coal refuse. With the development of fluidized beds, it is burned for energy and is used for other non-combustion products.

Petroleum coke can be interchanged with primary coals in pulverized coal boilers, fluidized beds, and stoker boilers. Coal refuse can be substituted for primary coals in fluidized beds and stoker boilers. Petroleum coke and coal refuse are burned in the same boilers as primary coals at the coal preparation plant and are processed alongside the primary coals. The health impacts of PM from petroleum coke and primary coals are similar; coverage of petroleum coke would therefore further protect public health.

The approach proposed is consistent with subparts Db and Dc, the large and small industrial boiler NSPS. Both subparts include petroleum coke and coal refuse under the definition of coal. Subpart Da, the utility boiler NSPS, was published prior to the industrial boiler NSPS, and only includes coal refuse in the definition of coal. At the time subpart Da was promulgated, petroleum coke was not considered to be ''created for the purpose of creating useful heat'' and hence was not used in the fossil fuel capacity as it is today.

I. Additional Amendments

We are proposing to change the title of subpart Y to more accurately reflect the affected facilities subject to subpart Y. The original applicability included affected facilities that some in the regulated community term ''processing'' facilities and would not call those operations ''preparation'' even though the original rulemaking used ''preparation'' more broadly. The revision is strictly intended to clarify the rule and not change the applicability.

The definitional amendments and additional amendments are intended to implement aspects of the rule discussed earlier and to update the American Society of Testing and Materials (ASTM) test methods for the different coal ranks. Also, because cyclonic flow is not used in subpart Y, its removal would not impact the rule.

We have concluded that it is not appropriate or beneficial to the public health to require an affected facility that is not currently in operation to start up to demonstrate compliance with the NSPS. Commencing operation strictly for the purposes of demonstrating compliance is an unnecessary cost and increases emissions.

J. Emissions Reductions

EPA believes that the proposed amendments would not significantly impact the overall compliance costs estimated for the original proposal, $3 million, and would continue to have an insignificant economic impact. However, EPA acknowledges that the overall emissions reductions that would result from the proposed amendments and associated costs of control are difficult to quantify precisely in advance.

For thermal dryers and pneumatic coal-cleaning equipment, the proposed amendments would significantly tighten control requirements. Because these controls apply to new sources not yet in operation, it is difficult to quantify the aggregated emissions reductions or costs for those reductions in advance. However, we anticipate that there will be only a limited number of new sources with thermal dryers or pneumatic coal-cleaning equipment, so the overall costs associated with the proposed amendments will likewise be limited. As to benefits, EPA believes that the proposed amendments are necessary because they would help to protect the public health and the environment by assuring that appropriate controls would be installed on future new thermal dryers and pneumatic coal-cleaning equipment should any be built.

The proposed pneumatic coal-cleaning PM standard is 40 percent lower than the existing standard. For thermal dryers, the proposed PM standard is one-third of the existing limit. The proposed SO_2 standard and combined NO_X-CO standard for these sources would reduce emissions by 50 percent from current uncontrolled levels. For the model thermal dryer used in the costing analysis, this equates to estimated annual reductions of 100 tons each of PM and SO_2 and 200 tons of combined NO_X and CO.

For coal handling operations, the proposed amendments would reduce

the current opacity standard from less than 20 percent to no greater than 5 percent. The proposal would thus reduce the opacity standard by 75 percent. Opacity is an indirect means to address the presence of PM emissions and not an actual direct measurement of the mass of PM emissions. Thus, in order to determine the precise amount of PM reductions that would be associated with this change in the opacity standard, we would need actual baseline PM emissions data at 20 percent opacity for a source, which are not available. Without these data, it is not possible for us to calculate the precise amount of PM reductions associated with the more stringent opacity limit with a high degree of certainty. We know, however, that lowering opacity from an affected facility generally results in a reduction in PM emissions, provided particle characteristics and size distribution remain similar for that facility.

The existing subpart Y standards for coal handling equipment include only an opacity limit. The proposed amendments would establish a new PM standard of 0.023 g/dscm (0.010 gr/dscf) that would apply to all sources that are mechanically vented. At this time we, only expect end users processing bituminous coal to mechanically vent affected facilities, and, thus, only these facilities would be subject to the proposed new PM limit. Under the existing NSPS, affected facilities that are mechanically vented would already need to install some type of control device to comply with the 20 percent opacity limit. For coal handling facilities that are mechanically vented, EPA believes that a baghouse is the lowest cost option. If we assume that in the absence of the proposed revisions such affected facilities would have installed baghouses with an emissions limit equivalent to that of the pneumatic coal-cleaning equipment (0.040 g/dscm), the proposed amendments reduce emissions by an additional 40 percent. For the model bituminous power plant used in the costing analysis, this equates to approximately 5 tons of PM reductions annually.

Based on public comment on the proposed amendments, we believe that the majority of new coal handling operations at mines are likely to be fugitive dust sources because they do not vent to a baghouse. In addition, end user locations that process subbituminous coal are moving toward PECS and fogging systems and would also be classified as fugitive dust sources. In both cases, only the opacity standard would apply. Thus, the aggregate costs of the new PM standard would be limited.

Subpart Y has not been revised since it was originally promulgated in 1976 and many States have more stringent control requirements. We believe it is appropriate to consider these existing State requirements when determining what is an appropriate baseline to compare against the proposed amendments. The majority of State permitting authorities that have more stringent control requirements require controls and work practice standards that maintain opacity well below 20 percent. In addition, any coal preparation plant that is subject to New Source Review (NSR) would also already have control requirements significantly more stringent than the existing NSPS. Therefore, EPA believes that additional costs resulting from the proposed amendments should be negligible for these affected facilities, and recognizes that additional emissions reductions from such sources would be lower as well.

IV. Modification and Reconstruction Provisions

Existing affected facilities at coal preparation plants that are modified or reconstructed after the date on which standards applicable to the facility are proposed are subject to the standard as finalized. In revising the standards in subpart Y, we have considered whether existing facilities that are reconstructed or modified will be able to achieve the new standards. Where appropriate, we have proposed different standards for new, modified, and reconstructed facilities. We are not proposing any amendments to existing law regarding how a facility would conduct the modification and reconstruction analysis.

V. Summary of Costs, Environmental, Energy, and Economic Impacts

In setting NSPS, the CAA requires EPA to consider alternative emission control approaches, taking into account the estimated costs and benefits, as well as energy, solid waste, and other effects. We request comment on whether we have identified the appropriate alternatives and whether the proposed standards adequately take into consideration the incremental effects in terms of emission reductions, energy, and other effects of these alternatives. We will consider the available information in developing the final rule.

The costs and environmental, energy, and economic impacts are expressed as incremental differences between the impacts of coal preparation facilities complying with the proposed amendments and the current common permitting authority requirements (i.e., baseline). We have concluded that the supplemental proposal adds additional compliance options and does not increase control costs or recordkeeping and reporting costs above those of the April 2008 proposal. The April 2008 proposal economic impact analysis still holds; the amendments would result in minimal changes in prices and output for the industries affected by the final rule. The price increase for baseload electricity, cement prices, coke prices, and coal prices are insignificant.

VI. Request for Comment

We request comments on all aspects of the proposed amendments to NSPS subpart Y. All significant comments received will be considered in the development and selection of the final rule. We specifically solicit comments on additional amendments that are under consideration. These potential amendments are described below.

1. Control Technologies for Controlling Emissions From Thermal Dryers

No new thermal dryers have been installed at bituminous coal mines in the past decade, and as described previously, we have concluded that a new thermal dryer would likely use gas recirculation instead of a once-through design. Although present coal-fired thermal dryer designs use either stoker or pulverized coal burners, we are requesting comment on the cost and whether it would be technically feasible to use a fluidized bed design to generate the heat for the drying process. We are also requesting comment on whether SNCR could be successfully applied at a new thermal dryer for control of NO_X emissions. If either of these control technologies is determined to be possible for a new thermal dryer, we will consider basing the combined NO_X and CO, and SO_2 limits for new thermal dryers on the use of these controls. Fluidized beds use limestone injection into the bed and can reduce potential SO_2 emissions by over 90 percent; SNCR reduces NO_X emissions by as much as 50 percent.

We are also requesting comment on whether it would be appropriate to set separate SO_2 emissions standards for new, reconstructed, and modified thermal dryers depending on whether the dryer is a once-through design. As described earlier, once-though dryers typically use scrubbers to control PM emissions and could concurrently control SO_2 emissions by 90 percent or more. If we decide to set separate standards for once-through and recirculation dryers, the once-through

SO_2 limit for new, reconstructed, and modified thermal dryers would be changed to 85 ng/J (0.20 lb/MMBtu), or 90 percent reduction in potential emissions and 520 ng/J (1.2 lb/MMBtu). The corresponding definition of a once-through thermal dryer would be a thermal dryer that does not recirculate any flue gas back to the furnace for temperature tempering. We request comment on this definition, as well as the standard discussed above.

In addition, we are requesting comment on establishing separate SO_2 limits based on the heat input capacity of the thermal dryer. For thermal dryers with heat input capacities of 250 MMBtu/hr or greater the incremental costs of scrubbers for the sole purpose of reducing SO_2 emissions is approximately $3,500 per ton and is considered cost effective for this source category. If we decide to set separate standards for larger thermal dryers, the large thermal dryer SO_2 limit for new, reconstructed, and modified thermal dryers would be changed to 85 ng/J (0.20 lb/MMBtu), or 90 percent reduction in potential emissions and 520 ng/J (1.2 lb/MMBtu).

2. PM Standard

We are considering, and requesting comment on, setting a more stringent PM limit for operations with a high volume of air vented from the affected facility. Larger control devices are more cost effective, and we are specifically requesting comment on setting the PM limit for coal handling and pneumatic coal cleaning equipment operations venting more than 2,000 dscm/min (70,000 dscf/min) at 0.012 g/dscm (0.0054 gr/dscf). Two-thirds of the post 1995 PM performance test results we collected were below this limit, and those that were not had a lb/hr limit and not a concentration limit and the design criteria for those fabric filters are unknown.

3. Rear Truck Dumps

The physical size and operation characteristics of rear truck dumps make operation with low instantaneous opacity difficult to achieve. Several western subbituminous mining operations that began operation in the late 1970s and early 1980s originally used enclosures and fabric filters to control PM emissions from rear truck dumps. It was the only viable technology at the time, but while PM and opacity emissions from the fabric filter stack were relatively low, overall capture and control were not as high. With the advent of larger coal trucks and stilling sheds, the State of Wyoming has allowed for the replacement of enclosures that are vented to a fabric filter with stilling sheds. Stilling sheds provide a fairly high level of PM control. However, the coal is dumped rapidly and there are instantaneous periods of high opacity even when the 6-minute opacity is low. The State of Wyoming determines if the still shed is working properly by averaging the highest instantaneous 15-second opacity of 10 truck dumps. As long as the average instantaneous opacity is less than 20 percent, the stilling shed is determined to be operating properly. We are requesting comment on whether requiring an annual average instantaneous opacity from 10 truck dumps is appropriate as an alternate to the Method 22 monitoring required for other affected facilities.

4. Opacity Monitoring

A single coal preparation plant can contain multiple similar affected facilities using similar control equipment configurations. To reduce the burden of the rulemaking while still maintaining an equivalent level of environmental protection, we are requesting comment on allowing the permitting authority to approve a single Method 22 observation as sufficient monitoring for up to 4 other similar affected facilities if the owner/operator agrees to site-specific equipment inspection and maintenance procedures approved by the permitting authority. If we include this approach in the final rule, the owner/operator would have to observe a different affected facility in the group each week and would still be required to conduct at least monthly observations for each piece of equipment.

5. Thermal Dryer Monitoring

We are requesting comment on several of the monitoring requirements for thermal dryers. First, owner/operators of thermal dryers are required to continuously monitor the temperature of the gas stream at the exit of the thermal dryer. We are requesting comment on the utility of collecting this information. If we determine this requirement could be eliminated without risk of a significant increase in emissions, we will consider eliminating this requirement.

Second, subpart Y requires owner/operators of wet scrubbers to continuously monitor the pressure drop through the venturi constriction and the water supply pressure. However, there are no requirements specified in the rule to maintain these values within a specified range, nor requirements regarding what averaging period should be used when determining the appropriate value. We are considering, and requesting comment on, adding requirements that pressure drop and water pressure be maintained at a minimum of 90 percent of the values recorded during the most recent performance test, and that an operating day average be used to determine the values.

Next, we are requesting comment on whether it is appropriate to replace the water supply pressure monitoring requirement with a requirement to monitor and maintain the water flow rate as determined from the most recent performance test.

Finally, because we are adding additional standards for thermal dryers we are considering, and requesting comment on, possible monitoring requirements for SO_2, NO_X, and CO. We request comment on requiring CEMS for monitoring SO_2, NO_X, and CO emissions. If we do require CEMS, we would use the same numerical emissions rate but the averaging period would be 30 days. We also request comment on alternative continuous monitoring options. In the event we do not require CEMS, we would require other continuous monitoring and require that the relevant parameters are maintained within 10 percent of the value recorded during the performance test on an operating day average. With regard to monitoring for SO_2, we are also considering, and requesting comment on, whether pH and water flow rate monitoring are appropriate for owner/operators of thermal dryers with a wet scrubber. In addition, for owner/operators of thermal dryers without a wet scrubber, we are considering, and requesting comment on, whether reagent injection flow rate and airflow rate are the appropriate monitoring parameters. For NO_X and CO, we are considering, and requesting comment on, requiring an O_2 monitor prior to temperature tempering to verify that the appropriate air-to-fuel ratio is maintained.

6. Opacity Standard for Open Storage Piles and Roadways

We are considering, and requesting comment on, both the feasibility of establishing an opacity standard for open storage piles and roadways and what opacity standard would be appropriate.

7. Work Practice Standards for Haul Roads

As an alternative to our proposal to exempt an owner/operator of roadways that do not leave the property of the affected facility from work practice standards directly, we request comment

on whether permitting authorities should be required to include other fugitive dust prevention measures (e.g., wetting of the road surface, sweeping of excess dust, tire washes) in the fugitive dust plan for such roadways.

VII. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' because it may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO. Accordingly, EPA submitted this action to the OMB for review under EO 12866, and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements associated with the April 2008 proposed rule have been submitted for approval to the OMB under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 1062.10. Because this supplemental proposal does not result in additional recordkeeping and reporting requirements, a new ICR document was not prepared.

The proposed amendments to the existing standards of performance for Coal Preparation Plants would add new monitoring, reporting, and recordkeeping requirements. The information would be used by EPA to ensure that any new affected facilities comply with the emission limits and other requirements. Records and reports would be necessary to enable EPA or States to identify new affected facilities that may not be in compliance with the requirements. Based on reported information, EPA would decide which units and what records or processes should be inspected.

The proposed amendments would not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements require only the specific information needed to determine compliance. These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentially is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentially of Business Information.

The annual monitoring, reporting, and recordkeeping burden for this collection averaged over the first 3 years of this ICR is estimated to total 32,664 labor hours per year at an average annual cost of $2,957,707. This estimate includes performance testing, excess emission reports, notifications, and recordkeeping. There are no capital/start-up costs or operational and maintenance costs associated with the monitoring requirements over the 3-year period of the ICR. Burden is defined at 5 CFR 1320.3(b).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a current valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2008–0260. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this action for where to submit comments to EPA. Send comments to OMB at the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: Desk Office for EPA. Because OMB is required to make a decision concerning the ICR between 30 and 60 days after May 27, 2009, a comment to OMB is best assured of having its full effect if OMB receives it by June 26, 2009. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of the proposed amendments on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements on small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The total annual control and monitoring costs of the proposed amendments, compared to a baseline of no control, at year five is $2 million. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments.

E. Executive Order 13132: Federalism

EO 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the EO to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

These proposed amendments do not have federalism implications. They will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in EO 13132. These proposed amendments will not impose substantial direct compliance costs on State or local governments; they will not preempt State law. Thus, EO 13132 does not

apply to these proposed amendments. In the spirit of EO 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on these proposed amendments from State and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). We are not aware of any coal preparation facilities owned by an Indian tribe. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This proposed action is not subject to EO 13045 because it is based solely on technology performance.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This proposed action is not a ''significant energy action'' as defined in EO 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this proposed action is not likely to have any adverse energy effects.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113 (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable VCS.

This proposed rulemaking involves technical standards. EPA proposes to use ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses,'' for its manual methods of measuring the oxygen, carbon dioxide, sulfur dioxide or nitrogen dioxide content of the exhaust gas. These parts of ASME PTC 19.10–1981 are acceptable alternatives to EPA Method 3B of appendix A–2 and EPA Methods 6, 6A, and 7 of appendix A–4 of 40 CFR part 60. This standard is available from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

EPA also proposes to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 5, 5B, 5D, 6, 6A, 6C, 7, 7E, 9, 10, 17, and 22 (40 CFR part 60, appendices A–1 through A–7). While the Agency has identified 20 VCS as being potentially applicable, we do not propose to use these standards in this proposed rulemaking. The use of these VCS would be impractical because they do not meet the objectives of the standards cited in this proposed rule. The search and review results are in the docket for this rule.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable VCS and to explain why such standards should be used in this regulation.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

EO 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practical and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high adverse human health or environmental effects on any populations, including any minority or low-income population. The proposed amendments would assure that all new coal preparation plants install appropriate controls to limit health impacts to nearby populations.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 15, 2009.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 60, of the Code of the Federal Regulations is proposed to be amended as follows:

PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

2. Section 60.17 is amended:

a. By revising paragraph (a)(13);

b. By removing paragraph (a)(14);

c. By redesignating paragraphs (a)(15) through (a)(93) as paragraphs (a)(14) through (a)(92); and

d. By revising paragraph (h)(4) to read as follows.

§ 60.17 Incorporations by reference.

* * * * *

(a) * * *

(13) ASTM D388–77, 90, 91, 95, 98a, 99 (Reapproved 2004)$^{\epsilon 1}$, Standard Specification for Classification of Coals by Rank, IBR approved for §§ 60.24(h)(8), 60.41 of subpart D of this part, 60.45(f)(4)(i), 60.45(f)(4)(ii), 60.45(f)(4)(vi), 60.41Da of subpart Da of this part, 60.41b of subpart Db of this part, 60.41c of subpart Dc of this part, 60.251 of subpart Y of this part, and 60.4102.

* * * * *

(h) * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [part 10, Instruments and Apparatus], IBR approved for § 60.106(e)(2) of subpart J, §§ 60.104a(d)(3), (d)(5), (d)(6), (h)(3), (h)(4), (h)(5), (i)(3), (i)(4), (i)(5), (j)(3), and (j)(4), 60.105a(d)(4), (f)(2), (f)(4), (g)(2), and (g)(4), 60.106a(a)(1)(iii), (a)(2)(iii), (a)(2)(v), (a)(2)(viii), (a)(3)(ii), and (a)(3)(v), and 60.107a(a)(1)(ii), (a)(1)(iv), (a)(2)(ii), (c)(2), (c)(4), and (d)(2) of subpart Ja, § 60.257(b)(3) of subpart Y, tables 1 and 3 of subpart EEEE, tables 2 and 4 of subpart FFFF, table 2 of subpart JJJJ, and

§§ 60.4415(a)(2) and 60.4415(a)(3) of subpart KKKK of this part.

* * * * *

Subpart Y—[Amended]

3. Part 60 is amended by revising subpart Y to read as follows:

Subpart Y—Standards of Performance for Coal Preparation and Processing Plants

Sec.

60.250 Applicability and designation of affected facility.
60.251 Definitions.
60.252 Standards for thermal dryers.
60.253 Standards for pneumatic coal-cleaning equipment.
60.254 Standards for coal processing and conveying equipment, coal storage system, and coal transfer system operations.
60.255 Performance tests and other compliance requirements.
60.256 Continuous monitoring requirements.
60.257 Test methods and procedures.
60.258 Reporting and recordkeeping.

§ 60.250 Applicability and designation of affected facility.

(a) The provisions of this subpart are applicable to any of the following affected facilities in coal preparation and processing plants which process more than 181 megagrams (Mg) (200 tons) per day of coal: Thermal dryers, pneumatic coal-cleaning equipment (air tables), coal processing and conveying equipment (including breakers and crushers), coal storage systems, and transfer and loading systems.

(b) Any affected facility under paragraph (a) of this section that commences construction, reconstruction, or modification after October 24, 1974, is subject to the requirements of this subpart.

§ 60.251 Definitions.

As used in this subpart, all terms not defined herein have the meaning given them in the Clean Air Act (Act) and in subpart A of this part.

Anthracite means coal that is classified as anthracite according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

Bag leak detection system means a system that is capable of continuously monitoring relative particulate matter (dust loadings) in the exhaust of a fabric filter to detect bag leaks and other upset conditions. A bag leak detection system includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to continuously monitor relative particulate matter loadings.

Bituminous coal means solid fossil fuel classified as bituminous coal by ASTM D388 (incorporated by reference-see § 60.17).

Coal for units constructed, reconstructed, or modified on or before May 27, 2009 means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D388 (incorporated by reference-see § 60.17). For units constructed, reconstructed, or modified after May 27, 2009, *coal* means all solid fossil fuels classified as anthracite, bituminous, subbituminous, or lignite by ASTM D388 (incorporated by reference-see § 60.17), coal refuse, and petroleum coke.

Coal preparation and processing plant means any facility (excluding underground mining operations) which prepares coal by one or more of the following processes: breaking, crushing, screening, wet or dry cleaning, and thermal drying.

Coal processing and conveying equipment means any machinery used to reduce the size of coal or to separate coal from refuse, and the equipment used to convey coal to or remove coal and refuse from the machinery. This includes, but is not limited to, breakers, crushers, screens, and conveying systems.

Coal refuse means debris product of coal mining or coal preparation and processing operations (e.g., culm, gob, boney, slate dumps, etc.) containing coal, matrix material, clay, and other organic and inorganic material.

Coal storage system for units constructed, reconstructed, or modified on or before May 27, 2009 means any facility used to store coal except for open storage piles. For units constructed, reconstructed, or modified after May 27, 2009, *coal storage system* means any facility used to store coal.

Design controlled potential PM emissions rate means the theoretical particulate matter (PM) emissions (Mg) that would result from the operation of a control device at its design emissions rate (grams per dry standard cubic meter (g/dscm)), multiplied by the maximum design flow rate (dry standard cubic meter per minute (dscm/min)), multiplied by 60 (minutes per hour (min/hr)), multiplied by 8,760 (hours per year (hr/yr)), divided by 1,000,000 (megagrams per gram (Mg/g)).

Indirect thermal dryer means a thermal dryer that reduces the moisture content of coal through indirect heating of the coal through contact with a heat transfer medium. If the source of heat (the source of combustion or furnace) is subject to either subpart Da, Db, or Dc of this part then the furnace and the associated emissions are not part of the affected facility. However, if the source of heat is not subject to either subpart Da, Db, or Dc of this part, then the furnace and the associated emissions are part of the affected facility.

Lignite means coal that is classified as lignite A or B according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

Mechanical vent means a vent using a powered mechanical drive (machine) to induce air flow.

Operating day means a 24-hour period between 12 midnight and the following midnight during which and coal is prepared or processed at any time by the affected facility. It is not necessary that coal be prepared or processed the entire 24-hour period.

Petroleum Coke also known as petcoke means a carbonization product of high-boiling hydrocarbon fractions obtained in petroleum processing (heavy residues). *Petroleum coke* is typically derived from oil refinery coker units or other cracking processes.

Pneumatic coal-cleaning equipment for units constructed, reconstructed, or modified on or before May 27, 2009 means any facility which classifies bituminous coal by size or separates bituminous coal from refuse by application of air stream(s). For units constructed, reconstructed, or modified after May 27, 2009, *pneumatic coal-cleaning equipment* means any facility which classifies coal by size or separates coal from refuse by application of air stream(s).

Potential combustion concentration means the theoretical emissions (nanograms per joule (ng/J) or pounds per million British thermal units (lb/MMBtu) heat input) that would result from combustion of a fuel in an uncleaned state without emission control systems, as determined using Method 19 of appendix A–7 of this part.

Subbituminous coal means coal that is classified as subbituminous A, B, or C according to the American Society of Testing and Materials in ASTM D388 (incorporated by reference, see § 60.17).

Thermal dryer for units constructed, reconstructed, or modified on or before May 27, 2009 means any facility in which the moisture content of bituminous coal is reduced by contact with a heated gas stream which is exhausted to the atmosphere. For units constructed, reconstructed, or modified after May 27, 2009, *thermal dryer* means any facility in which the moisture content of coal is reduced by either contact with a heated gas stream which

is exhausted to the atmosphere or through indirect heating of the coal through contact with a heated heat transfer medium.

Transfer and loading system means any facility used to transfer and load coal for shipment.

§ 60.252 Standards for thermal dryers.

(a) On and after the date on which the performance test is conducted or required to be completed under § 60.8, whichever date comes first, an owner or operator of a thermal dryer constructed, reconstructed, or modified on or before April 28, 2008, subject to the provisions of this subpart must meet the requirements in paragraphs (a)(1) and (a)(2) of this section.

(1) The owner or operator shall not cause to be discharged into the atmosphere from the thermal dryer any gases which contain PM in excess of 0.070 g/dscm (0.031 grains per dry standard cubic feet (gr/dscf)); and

(2) The owner or operator shall not cause to be discharged into the atmosphere from the thermal dryer any gases which exhibit 20 percent opacity or greater.

(b) On and after the date on which the performance test is conducted or required to be completed under § 60.8, whichever date comes first, an owner or operator of a thermal dryer constructed, reconstructed, or modified after April 28, 2008, subject to the provisions of this subpart must meet the applicable standards for PM, sulfur dioxide (SO_2), and combined nitrogen oxides (NO_X) and carbon monoxide (CO) as specified in paragraphs (b)(1) through (3) of this section.

(1) The owner or operator must meet the requirements for PM emissions in paragraphs (b)(1)(i) through (iii) of this section, as applicable to the affected facility.

(i) For each thermal dryer constructed after April 28, 2008, the owner or operator must meet the requirements of (b)(1)(i)(A) and (b)(1)(i)(B).

(A) The owner or operator must not cause to be discharged into the atmosphere from the thermal dryer any gases that contain PM in excess of 0.023 g/dscm (0.010 grains per dry standard cubic feet (gr/dscf)); and

(B) The owner or operator must not cause to be discharged into the atmosphere from the thermal dryer any gases that exhibit 10 percent opacity or greater.

(ii) For each thermal dryer reconstructed after April 28, 2008, the owner or operator must meet the requirements of paragraph (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section.

(A) The owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases that contain PM in excess of 0.045 g/dscm (0.020 gr/dscf); and

(B) The owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases that exhibit 20 percent opacity or greater.

(iii) For each thermal dryer modified after April 28, 2008, the owner or operator must meet the requirements of paragraphs (b)(1)(iii)(A) and (b)(1)(iii)(B) of this section.

(A) The owner or operator must not cause to be discharged to the atmosphere from the affected facility any gases which contain PM in excess of 0.070 g/dscm (0.031 gr/dscf); and

(B) The owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases which exhibit 20 percent opacity or greater.

(2) For each thermal dryer constructed, reconstructed, or modified after May 27, 2009, the owner or operator must meet the requirements for SO_2 emissions in either paragraph (b)(2)(i) or (ii) of this section, except for indirect thermal dryers where the source of the heat is subject to either subpart Da, Db, or Dc of this part.

(i) The owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases that contain SO_2 in excess of 85 ng/J (0.20 lb/MMBtu) heat input; or

(ii) The owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases that either contain SO_2 in excess of 520 ng/J (1.20 lb/MMBtu) heat input or exceed 50 percent of the potential combustion concentration (*i.e.*, achieve at least a 50 percent reduction of the potential combustion concentration and do not exceed a maximum emissions rate of 1.2 lb/MMBtu (520 ng/J)).

(3) The owner or operator must meet the requirements for combined NO_X and CO emissions in paragraph (b)(3)(i) or (ii) of this section, as applicable to the affected facility, except for indirect thermal dryers where the source of the heat is subject to either subpart Da, Db, or Dc of this part.

(i) For each thermal dryer constructed after May 27, 2009, the owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases which contain a combined concentration of NO_X and CO in excess of 280 ng/J (0.65 lb/MMBtu) heat input.

(ii) For each thermal dryer reconstructed or modified after May 27, 2009, the owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases which contain combined concentration of NO_X and CO in excess of 430 ng/J (1.0 lb/MMBtu) heat input.

§ 60.253 Standards for pneumatic coal-cleaning equipment.

(a) On and after the date on which the performance test is conducted or required to be completed under § 60.8, whichever date comes first, an owner or operator of pneumatic coal-cleaning equipment constructed, reconstructed, or modified on or before April 28, 2008, must meet the requirements of paragraphs (a)(1) and (a)(2) of this section.

(1) The owner or operator must not cause to be discharged into the atmosphere from the pneumatic coal-cleaning equipment any gases that contain PM in excess of 0.040 g/dscm (0.017 gr/dscf); and

(2) The owner or operator must not cause to be discharged into the atmosphere from the pneumatic coal-cleaning equipment any gases that exhibit 10 percent opacity or greater.

(b) On and after the date on which the performance test is conducted or required to be completed under § 60.8, whichever date comes first, an owner or operator of pneumatic coal-cleaning equipment constructed, reconstructed, or modified after April 28, 2008, must meet the requirements in paragraphs (b)(1) and (b)(2) of this section.

(1) The owner of operator must not cause to be discharged into the atmosphere from the pneumatic coal-cleaning equipment any gases that contain PM in excess of 0.023 g/dscm (0.010 gr/dscf); and

(2) The owner or operator must not cause to be discharged into the atmosphere from the pneumatic coal-cleaning equipment any gases that exhibit greater than 5 percent opacity.

§ 60.254 Standards for coal processing and conveying equipment, coal storage system, and coal transfer system operations.

(a) On and after the date on which the performance test is conducted or required to be completed under § 60.8, whichever date comes first, an owner or operator shall not cause to be discharged into the atmosphere from any coal processing and conveying equipment, coal storage system, or coal transfer and loading system processing coal constructed, reconstructed, or modified on or before April 28, 2008, gases which exhibit 20 percent opacity or greater.

(b) On and after the date on which the performance test is conducted or

required to be completed under § 60.8, whichever date comes first, an owner or operator of any coal processing and conveying equipment, coal storage system, or coal transfer and loading system processing coal constructed, reconstructed, or modified after April 28, 2008, must meet the requirements in paragraphs (b)(1) through (3) of this section, as applicable to the affected facility.

(1) The owner or operator must not cause to be discharged into the atmosphere from the affected facility any gases which exhibit greater than 5 percent opacity.

(2) The owner or operator must not cause to be discharged into the atmosphere from any mechanical vent at the facility gases which contain particulate matter in excess of 0.023 g/dscm (0.010 gr/dscf).

(3) The owner or operator must control fugitive coal dust emissions from fugitive sources at the facility by operating according to a written fugitive emissions control plan that has been approved by the permitting authority. The fugitive emissions control plan must address the fugitive emissions sources specified in paragraph (b)(3)(i) of this section, as applicable to the affected facility, and include the information specified in paragraph (b)(3)(ii) of this section.

(i) The fugitive emissions control plan must address each of the fugitive emissions sources listed in paragraphs (b)(3)(i)(A) through (C) of this section that are located at the facility.

(A) Open storage piles used for storage of coal.

(B) Roadways associated with and within the same contiguous property as the coal preparation and processing plant.

(C) Other site-specific sources of fugitive emissions that the Administrator or permitting authority determines need to be included in your fugitive emissions control plan.

(ii) The fugitive emissions control plan must describe the control measures the owner or operator shall use to minimize fugitive emissions from each source addressed in the plan, and explain how the measures are applicable and appropriate for the site conditions. For open storage piles, the fugitive emissions plan must specify how one or more of the following control measures will be used to minimize fugitive coal dust: locating the source inside a partial enclosure, installing and operating a water spray or fogging system, applying appropriate chemical dust suppression agents on the source, use of a wind barrier, or use of a vegetative cover. For roadways, the fugitive emissions plan must specify how one or more of the following control measures will be used to minimize fugitive dust: paving, sweeping excess coal dust, wetting of the road surface, or tire washes. The permitting authority may approve a fugitive emissions plan that includes control technologies other than those specified above only if the owner or operator has demonstrated to the Administrator that the alternate control technology will provide equivalent overall environmental protection or if it has determined to the Administrator that it is either economically or technically infeasible for the affected facility to use the control options specifically identified in this paragraph.

(iii) If the owner or operator of the affected facility is part of a source which is subject to title V permitting, then the requirement for the owner or operator to operate according to a written fugitive emissions control plan which has been approved by the permitting authority must be incorporated into the title V operating permit for the source. Additionally, a copy of the fugitive emissions control plan must be submitted to the permitting authority 90 days prior to the compliance date for the affected facility. Any revisions to the fugitive emissions control plan are not effective until approved by the permitting authority. All of the requirements in this paragraph are to be specified in any title V permit which covers the affected facility.

§ 60.255 Performance tests and other compliance requirements.

(a) An owner or operator of each affected facility that commenced construction, reconstruction, or modification on or before April 28, 2008, must conduct all performance tests required by § 60.8 to demonstrate compliance with the applicable emission standards using the methods identified in § 60.257.

(b) An owner or operator of each affected facility that commenced construction, reconstruction, or modification after April 28, 2008, must conduct performance tests according to the requirements of § 60.8 and the methods identified in § 60.257 to demonstrate compliance with the applicable emissions standards in this subpart as specified in paragraphs (b)(1) and (2) of this section.

(1) For each affected facility subject to a PM, SO_2, or combined NO_X and CO emissions standard, an initial performance test must be performed except as provided for in paragraph (d) of this section. Thereafter, a new performance test must be conducted according to the requirements in paragraphs (b)(1)(i) and (ii) of this section, as applicable.

(i) If the results of the most recent performance test demonstrate that emissions from the affected facility are greater than 50 percent of the applicable emissions standard, a new performance test must be conducted within 12 calendar months of the date that the previous performance test was required to be completed.

(ii) If the results of the most recent performance test demonstrate that emissions from the affected facility are 50 percent or less of the applicable emissions standard, a new performance test must be conducted within 24 calendar months of the date that the previous performance test was required to be completed.

(iii) An owner or operator of an affected facility that has not operated for the 60 calendar days prior to the due date of a performance test is not required to perform the subsequent performance test until 30 calendar days after the next operating day.

(2) For each affected facility subject to an opacity standard, an initial performance test must be performed. Thereafter, a new performance test must be conducted according the requirements in paragraphs (b)(2)(i) through (iv) of this section, as applicable, except as provided for in paragraphs (e) and (f) of this section.

(i) If the maximum 15-second opacity reading in the most recent performance test is greater than 5 percent, a new performance test must be conducted within 7 operating days of the date that the previous performance test was required to be completed.

(ii) If the maximum 15-second opacity reading in the most recent performance test is 5 percent, a new performance test must be conducted within 30 operating days of the date that the previous performance test was required to be completed.

(iii) If no visible emissions are observed in the most recent performance test, a new performance test must be conducted within 120 operating days of the date of the previous performance test was required to be completed.

(iv) An owner or operator of affected facilities continuously monitoring scrubber parameters as specified in § 60.256 is exempt from the requirements in paragraphs (b)(2)(i) through (iii) if opacity performance tests are conducted concurrently (or within a 60-minute period) with PM performance tests.

(c) An owner or operator of an affected facility subject to a PM

emission standard (other than a thermal dryer) that uses a control device with a design control potential PM emissions rate of 1.0 Mg (1.1 tons) per year or less is exempted from the requirements of paragraphs (b)(1)(i) and (ii) of this section provided that the owner or operator meets all of the following conditions specified in paragraphs (c)(1) through (4) of this section. This exemption does not apply to thermal dryers.

(1) The design emissions limit is less than or equal to the applicable PM emissions standard and the results of the most recent performance test were less than or equal to the applicable limit,

(2) The control device manufacturer's recommended maintenance procedures are followed, and

(3) The monitoring requirements in paragraphs (e) or (f) of this section are followed.

(d) An owner or operator of a group of up to five of the same type of affected facilities that are subject to PM emissions standards and use identical control devices each with a design potential PM emissions rate of 10 Mg (11 tons) per year or less, the permitting authority may allow the owner or operator to use a single PM performance test for one of the affected control devices to demonstrate that the group of affected facilities is in compliance with the applicable emissions standards provided that the owner or operator meets all of the following conditions specified in paragraphs (d)(1) through (4) of this section.

(1) The design emissions limit for each individual affected facility is less than or equal to the applicable PM emissions limit and the performance test for each individual affected facility is 90 percent or less of the applicable PM standard;

(2) The manufacturer's recommended maintenance procedures are followed for each control device;

(3) The monitoring requirements in paragraph (e) or (f) of this section are used for each affected facility; and

(4) A performance test is conducted on each affected facility at least once every 5 calendar years.

(e) As an alternative to meeting the requirements in paragraph (b)(2)(i) through (iii) of this section, an owner or operator of an affected facility for which the maximum 6-minute opacity reading from the most recent Method 9 of appendix A–4 of this part performance test is less than 3 percent may elect to comply with the requirements in paragraph (e)(1) or (2) of this section.

(1) Monitor visible emissions from each affected facility according to the requirements in either paragraph (e)(1)(i) or (ii) of this section.

(i) Conduct daily observations each operating day for a period of at least 10 minutes (during normal operation) when the coal preparation and processing plant is in operation using EPA Method 22 of appendix A–7 of this part and demonstrate that the sum of the occurrences of any visible emissions is not in excess of 5 percent of the observation period (*i.e.*, 30 seconds per 10-minute period). If the sum of the occurrence of any visible emissions is greater than 30 seconds during the initial 10-minute observation, immediately conduct a 30-minute observation. If the sum of the occurrence of visible emissions is greater than 5 percent of the observation period (*i.e.*, 90 seconds per 30-minute period) the owner or operator shall either document and adjust the operation of the facility and demonstrate within 24 hours that the sum of the occurrence of visible emissions is equal to or less than 5 percent during a 30-minute observation (*i.e.*, 90 seconds) or conduct a new Method 9 of appendix A–4 of this part performance test within 30 calendar days unless a waiver is granted by the permitting authority.

(ii) If no visible emissions are observed for 7 consecutive operating days, observations can be reduced to once every 7 operating days. If any visible emissions are observed, daily observations shall be resumed.

(2) Prepare a written site-specific monitoring plan for a digital opacity compliance system for approval by the Administrator. The plan shall require observations of at least one digital image every 15 seconds for 10-minute periods (during normal operation) every operating day. An approvable monitoring plan must include a demonstration that the occurrences of visible emissions are not in excess of 5 percent of the observation period. For reference purposes in preparing the monitoring plan, see OAQPS ''Determination of Visible Emission Opacity From Stationary Sources Using Computer-Based Photographic Analysis Systems.'' This document is available from the U.S. Environmental Protection Agency (U.S. EPA); Office of Air Quality and Planning Standards; Sector Policies and Programs Division; Measurement Group (D243–02), Research Triangle Park, NC 27711. This document is also available on the Technology Transfer Network (TTN) under Emission Measurement Center Preliminary Methods. The monitoring plan approved by the Administrator shall be implemented by the owner or operator.

(f) As an alternative to meeting the requirements in paragraph (b)(2) of this section, an owner or operator of an affected facility subject to a visible emissions standard under this subpart may install, operate, and maintain a continuous opacity monitoring system (COMS). Each COMS used to comply with provisions of this subpart must be installed, calibrated, maintained, and continuously operated according to the requirements in paragraphs (f)(1) and (2) of this section.

(1) The COMS must meet Performance Specification 1 in 40 CFR part 60, appendix B.

(2) The COMS must comply with the quality assurance requirements in paragraphs (f)(2)(i) through (v) of this section.

(i) The owner or operator must automatically (intrinsic to the opacity monitor) check the zero and upscale (span) calibration drifts at least once daily. For particular COMS, the acceptable range of zero and upscale calibration materials is as defined in the applicable version of Performance Specification 1 in 40 CFR part 60, appendix B.

(ii) The owner or operator must adjust the zero and span whenever the 24-hour zero drift or 24-hour span drift exceeds 4 percent opacity. The COMS must allow for the amount of excess zero and span drift measured at the 24-hour interval checks to be recorded and quantified. The optical surfaces exposed to the effluent gases must be cleaned prior to performing the zero and span drift adjustments, except for systems using automatic zero adjustments. For systems using automatic zero adjustments, the optical surfaces must be cleaned when the cumulative automatic zero compensation exceeds 4 percent opacity.

(iii) The owner or operator must apply a method for producing a simulated zero opacity condition and an upscale (span) opacity condition using a certified neutral density filter or other related technique to produce a known obscuration of the light beam. All procedures applied must provide a system check of the analyzer internal optical surfaces and all electronic circuitry including the lamp and photodetector assembly.

(iv) Except during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments, the COMS must be in continuous operation and must complete a minimum of one cycle of sampling and analyzing for each successive 10-second period and one cycle of data recording for each successive 6-minute period.

(v) The owner or operator must reduce all data from the COMS to 6-minute averages. Six-minute opacity averages must be calculated from 36 or more data points equally spaced over each 6-minute period. Data recorded during periods of system breakdowns, repairs, calibration checks, and zero and span adjustments must not be included in the data averages. An arithmetic or integrated average of all data may be used.

§ 60.256 Continuous monitoring requirements.

(a) The owner or operator of each affected facility constructed, reconstructed, or modified on or before April 28, 2008, must meet the monitoring requirements specified in paragraphs (a)(1) and (2) of this section, as applicable to the affected facility.

(1) The owner or operator of any thermal dryer shall install, calibrate, maintain, and continuously operate monitoring devices as follows:

(i) A monitoring device for the measurement of the temperature of the gas stream at the exit of the thermal dryer on a continuous basis. The monitoring device is to be certified by the manufacturer to be accurate within ±1.7 °C (±3 °F).

(ii) For affected facilities that use wet scrubber emission control equipment:

(A) A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±1 inch water gauge.

(B) A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±5 percent of design water supply pressure. The pressure sensor or tap must be located close to the water discharge point. The Administrator shall have discretion to grant requests for approval of alternative monitoring locations.

(2) All monitoring devices under paragraph (a) of this section are to be recalibrated annually in accordance with procedures under § 60.13(b).

(b) The owner or operator of each affected facility constructed, reconstructed, or modified after April 28, 2008, that has one or more mechanical vents must install, calibrate, maintain, and continuously operate the monitoring devices specified in paragraphs (b)(1) and (2) of this section, as applicable to the mechanical vent and any control device installed on the vent.

(1) For mechanical vents with fabric filters (baghouses) with the design controlled potential PM emissions rate of 25 Mg (28 tons) per year or more, a bag leak detection system according to the requirements in paragraph (c) of this section.

(2) For mechanical vents with wet scrubbers, monitoring devices according to the requirements in paragraphs (b)(2)(i) and (ii) of this section.

(i) A monitoring device for the continuous measurement of the pressure loss through the venturi constriction of the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±1 inch water gauge.

(ii) A monitoring device for the continuous measurement of the water supply pressure to the control equipment. The monitoring device is to be certified by the manufacturer to be accurate within ±5 percent of design water supply pressure. The pressure sensor or tap must be located close to the water discharge point.

(c) Each bag leak detection system used to comply with provisions of this subpart must be installed, calibrated, maintained, and continuously operated according to the requirements in paragraphs (c)(1) through (3) of this section.

(1) The bag leak detection system must meet the specifications and requirements in paragraphs (c)(1)(i) through (viii) of this section.

(i) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 1 milligram per dry standard cubic meter (mg/dscm) (0.00044 grains per actual cubic foot (gr/acf)) or less.

(ii) The bag leak detection system sensor must provide output of relative PM loadings. The owner or operator shall continuously record the output from the bag leak detection system using electronic or other means (*e.g.*, using a strip chart recorder or a data logger).

(iii) The bag leak detection system must be equipped with an alarm system that will sound when the system detects an increase in relative particulate loading over the alarm set point established according to paragraph (c)(1)(iv) of this section, and the alarm must be located such that it can be heard by the appropriate plant personnel.

(iv) In the initial adjustment of the bag leak detection system, the owner or operator must establish, at a minimum, the baseline output by adjusting the sensitivity (range) and the averaging period of the device, the alarm set points, and the alarm delay time.

(v) Following initial adjustment, the owner or operator must not adjust the averaging period, alarm set point, or alarm delay time without approval from the Administrator or permitting authority except as provided in paragraph (c)(2)(vi) of this section.

(vi) Once per quarter, the owner or operator may adjust the sensitivity of the bag leak detection system to account for seasonal effects, including temperature and humidity, according to the procedures identified in the site-specific monitoring plan required by paragraph (c)(2) of this section.

(vii) The owner or operator must install the bag leak detection sensor downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(2) The owner or operator must develop and submit to the permitting authority for approval a site-specific monitoring plan for each bag leak detection system. This plan must be submitted to the permitting authority 90 days prior to the compliance date for the affected facility. The owner or operator must operate and maintain the bag leak detection system according to the site-specific monitoring plan at all times. Each monitoring plan must describe the items in paragraphs (c)(2)(i) through (vi) of this section.

(i) Installation of the bag leak detection system;

(ii) Initial and periodic adjustment of the bag leak detection system, including how the alarm set-point will be established;

(iii) Operation of the bag leak detection system, including quality assurance procedures;

(iv) How the bag leak detection system will be maintained, including a routine maintenance schedule and spare parts inventory list;

(v) How the bag leak detection system output will be recorded and stored; and

(vi) Corrective action procedures as specified in paragraph (c)(3) of this section. In approving the site-specific monitoring plan, the Administrator or permitting authority may allow the owner and operator more than 3 hours to alleviate a specific condition that causes an alarm if the owner or operator identifies in the monitoring plan this specific condition as one that could lead to an alarm, adequately explains why it is not feasible to alleviate this condition within 3 hours of the time the alarm occurs, and demonstrates that the requested time will ensure alleviation of this condition as expeditiously as practicable.

(3) For each bag leak detection system, the owner or operator must initiate procedures to determine the cause of every alarm within 1 hour of the alarm. Except as provided in paragraph (c)(2)(vi) of this section, the owner or operator must alleviate the cause of the alarm within 3 hours of the alarm by taking whatever corrective action(s) are necessary. Corrective actions may include, but are not limited to the following:

(i) Inspecting the fabric filter for air leaks, torn or broken bags or filter media, or any other condition that may cause an increase in PM emissions;

(ii) Sealing off defective bags or filter media;

(iii) Replacing defective bags or filter media or otherwise repairing the control device;

(iv) Sealing off a defective fabric filter compartment;

(v) Cleaning the bag leak detection system probe or otherwise repairing the bag leak detection system; or

(vi) Shutting down the process producing the PM emissions.

§ 60.257 Test methods and procedures.

(a) The owner or operator must determine compliance with the applicable opacity standards as specified in paragraphs (a)(1) through (4) of this section.

(1) Method 9 of appendix A–4 of this part and the procedures in § 60.11 must be used to determine opacity.

(2) To determine opacity for fugitive emissions sources, the additional requirements specified in paragraphs (a)(2)(i) through (iii) of this section must be used.

(i) The minimum distance between the observer and the emission source shall be 5.0 meters (16 feet), and the sun shall be oriented in the 140-degree sector of the back.

(ii) The observer shall select a position that minimizes interference from other fugitive emissions sources and make observations such that the line of vision is approximately perpendicular to the plume and wind direction.

(iii) The observer shall make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. Water vapor is not considered a visible emission.

(3) If during the initial 60 minutes of the observation of a Method 9 of appendix A–4 of this part performance test all of the individual 15-second observations are less than or equal to 20 percent and all of the resulting 6-minute averages are less than or equal to 3 percent or half the applicable limit, whichever is greater, then the observation period may be reduced from 3 hours to 60 minutes.

(4) A visible emissions observer may conduct visible emission observations for up to three fugitive, stack, or vent emission points within a 15-second interval if the following conditions specified in paragraphs (a)(4)(i) through (iii) of this section are met.

(i) No more than three emissions points may be read concurrently.

(ii) All three emissions points must be within a 70-degree viewing sector or angle in front of the observer such that the proper sun position can be maintained for all three points.

(iii) If an opacity reading for any one of the three emissions points is within 5 percent opacity from the applicable standard (excluding readings of zero opacity), then the observer must stop taking readings for the other two points and continue reading just that single point.

(b) The owner or operator must conduct all performance tests required by § 60.8 to demonstrate compliance with the applicable emissions standards specified in § 60.252 according to the requirements in § 60.8 using the applicable test methods and procedures in paragraphs (b)(1) through (8) of this section.

(1) Method 1 or 1A of appendix A–4 of this part shall be used to select sampling port locations and the number of traverse points in each stack or duct. Sampling sites must be located at the outlet of the control device (or at the outlet of the emissions source if no control device is present) prior to any releases to the atmosphere.

(2) Method 2, 2A, 2C, 2D, 2F, or 2G of appendix A–4 of this part shall be used to determine the volumetric flow rate of the stack gas.

(3) Method 3, 3A, or 3B of appendix A–4 of this part shall be used to determine the dry molecular weight of the stack gas. The owner or operator may use ANSI/ASME PTC 19.10–1981, ''Flue and Exhaust Gas Analyses'' (incorporated by reference—see § 60.17) as an alternative to EPA Method 3B of appendix A–2 of this part.

(4) Method 4 of appendix A–4 of this part shall be used to determine the moisture content of the stack gas.

(5) Method 5, 5B or 5D of appendix A–4 of this part or Method 17 of appendix A–7 of this part shall be used to determine the PM concentration as follows:

(i) The sampling time and sample volume for each run shall be at least 60 minutes and 0.85 dscm (30 dscf). Sampling shall begin no less than 30 minutes after startup and shall terminate before shutdown procedures begin. A minimum of three valid test runs are needed to comprise a PM performance test.

(ii) Method 5 of appendix A of this part shall be used only to test emissions from affected facilities without wet flue gas desulfurization (FGD) systems.

(iii) Method 5B of appendix A of this part is to be used only after wet FGD systems.

(iv) Method 5D of appendix A–4 of this part shall be used for positive pressure fabric filters and other similar applications (e.g., stub stacks and roof vents).

(v) Method 17 of appendix A–6 of this part may be used at facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160 °C (320 °F). The procedures of sections 8.1 and 11.1 of Method 5B of appendix A–3 of this part may be used in Method 17 of appendix A–6 of this part only if it is used after a wet FGD system. Do not use Method 17 of appendix A–6 of this part after wet FGD systems if the effluent is saturated or laden with water droplets.

(6) Method 6, 6A, or 6C of appendix A–4 of this part shall be used to determine the SO_2 concentration. A minimum of three valid test runs are needed to comprise an SO_2 performance test.

(7) Method 7 or 7E of appendix A–4 of this part shall be used to determine the NO_X concentration. A minimum of three valid test runs are needed to comprise an NO_X performance test.

(8) Method 10 of appendix A–4 of this part shall be used to determine the CO concentration. A minimum of three valid test runs are needed to comprise a CO performance test. CO performance tests are conducted concurrently (or within a 30- to 60-minute period) with NO_X performance tests.

§ 60.258 Reporting and recordkeeping.

(a) The owner or operator of a coal preparation and processing plant that commenced construction, reconstruction, or modification after April 28, 2008, shall maintain in a logbook (written or electronic) on-site and make it available upon request. The logbook shall record the following:

(1) The manufacturer's recommended maintenance procedures and the date and time of any maintenance and inspection activities and the results of those activities. Any variance from manufacturer recommendation, if any, shall be noted.

(2) The date and time of periodic coal preparation and processing plant opacity observations noting those sources with emissions above the action

level (visible emissions in excess of 5 percent of the observation period) along with corrective actions taken to reduce visible emissions. Results from the actions shall be noted.

(3) The amount and type of coal processed each calendar month.

(4) The amount of chemical stabilizer or water purchased for use in the coal preparation and processing plant.

(5) Monthly certification that the dust suppressant systems were operational when any coal was processed and that manufacturer's recommendations were followed for all control systems. Any variance from the manufacturer's recommendations, if any, shall be noted.

(6) A copy of any applicable fugitive dust emissions control plan and monthly certification that the plan was implemented as described. Any variance from plan, if any, shall be noted.

(7) For each bag leak detection system, the owner or operator must keep the records specified in paragraphs (a)(7)(i) through (iii) of this section.

(i) Records of the bag leak detection system output;

(ii) Records of bag leak detection system adjustments, including the date and time of the adjustment, the initial bag leak detection system settings, and the final bag leak detection settings; and

(iii) The date and time of all bag leak detection system alarms, the time that procedures to determine the cause of the alarm were initiated, the cause of the alarm, an explanation of the actions taken, the date and time the cause of the alarm was alleviated, and whether the cause of the alarm was alleviated within 3 hours of the alarm.

(8) A copy of any applicable monitoring plan for a digital opacity compliance system and monthly certification that the plan was implemented as described. Any variance from plan, if any, shall be noted.

(9) During a performance test of a wet scrubber, and each operating day thereafter, the owner or operator shall record the measurements of both the scrubber pressure loss and water supply pressure.

(b) For the purpose of reports required under § 60.7(c), any owner/operator subject to the provisions of this subpart shall report semiannually periods of excess emissions as follows:

(1) The owner or operator of an affected facility with a wet scrubber shall submit semiannual reports to the Administrator of occurrences when the measurements of the scrubber pressure loss and water supply pressure decrease by more than 10 percent from the average determined during the most recent performance test.

(2) All 6-minute average opacities that exceed the applicable standard.

(c) The owner or operator of an affected facility shall submit the results of initial performance tests to the Administrator, consistent with the provisions of § 60.8. The owner or operator who elects to comply with the reduced performance testing provisions of §§ 60.255(c) or (d) shall include in the performance test report identification of each affected facility that will be subject to the reduced testing, and the design emissions limit of each associated control device. The owner or operator electing to comply with § 60.255(d) shall also include information which demonstrates that the control devices are identical.

(d) After July 1, 2011, within 60 days after the date of completing each performance evaluation conducted to demonstrate compliance with this subpart, the owner or operator of the affected facility must submit the test data to EPA by successfully entering the data electronically into EPA's WebFIRE data base available at *http://cfpub.epa.gov/oarweb/index.cfm?action=fire.main.* For performance tests that cannot be entered into WebFIRE (*i.e.*, Method 9 of appendix A–4 of this part opacity performance tests) the owner or operator of the affected facility must mail a summary copy to United States Environmental Protection Agency, Energy Strategies Group, 109 TW Alexander DR, *mail code:* D243–01, RTP, NC 27711.

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Part III

Department of Transportation

Federal Railroad Administration

49 CFR Part 228

Hours of Service of Railroad Employees; Amended Recordkeeping and Reporting Regulations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 228

[Docket No. 2006–26176, Notice No. 1]

RIN 2130–AB85

Hours of Service of Railroad Employees; Amended Recordkeeping and Reporting Regulations

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is amending its hours of service recordkeeping and reporting regulations to ensure the creation of records that support compliance with the hours of service laws as amended by the Rail Safety Improvement Act of 2008 (RSIA of 2008). This regulation will also provide for electronic recordkeeping and reporting, and will require training of employees and supervisors of those employees, who are required to complete hours of service records, or are responsible for making determinations as to excess service and the reporting of excess service to FRA as required by the regulation. This regulation is required by Section 108(f) of the RSIA of 2008.

DATES: This final rule is effective July 16, 2009. Petitions for reconsideration must be received on or before July 6, 2009.

ADDRESSES: *Petitions for reconsideration:* Any petitions for reconsideration related to Docket No. FRA–2006–26176, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *http://www.regulations.gov*. Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* Room W12–140 on the Ground level 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: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all petitions received will be posted without change to *http://www.regulations.gov* including any personal information. Please see the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted petitions, comments, or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to Room W12–140 on the Ground level 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.

FOR FURTHER INFORMATION CONTACT: Daniel Norris, Operating Practices Specialist, Operating Practices Division, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., RRS–11, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6242); or Colleen A. Brennan, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., RCC–12, Mail Stop 10, Washington, DC 20590 (telephone 202–493–6028 or 202–493–6052).

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Background and History
  A. Statutory History
  B. History of Hours of Service Recordkeeping
II. Rail Safety Improvement Act of 2008
  A. Substantive Changes to the HSL
  B. Rulemaking Mandate
III. Railroad Safety Advisory Committee Process
  1. Multiple-Train Reporting
  2. Pre-Population of Data
  3. Tie-up Procedures for Signal Employees
  4. Tracking Cumulative Totals Toward the 276-Hour Monthly Maximum Limitation
  5. Multiple Reporting Points
IV. Section-by-Section Analysis
V. Regulatory Impact and Notices
  A. Statutory Authority
  B. Executive Order 12866 and DOT Regulatory Policies and Procedures
  C. Executive Order 13132
  D. Executive Order 13175
  E. Regulatory Flexibility Act and Executive Order 13272
  F. Paperwork Reduction Act
  G. Regulation Identifier Number (RIN)
  H. Unfunded Mandates Reform Act
  I. Environmental Assessment

I. Background and History

A. Statutory History

Federal laws governing railroad employees' hours of service date back to 1907. *See* Public Law 59–274, 34 Stat. 1415 (1907). These laws, codified at 49 U.S.C. 21101 *et seq.* are intended to promote safe railroad operations by limiting the hours of service of certain railroad employees and ensuring that they receive adequate opportunities for rest in the course of performing their duties. The Secretary of Transportation (''Secretary'') is charged with the administration of those laws, 49 U.S.C. 103(a), now collectively referred to as the HSL. These functions have been delegated to the FRA Administrator. 49 U.S.C. 103(c); 49 CFR 1.49(d).

Congress substantially amended the HSL on two previous occasions. The first significant amendments occurred in 1969. Public Law 91–169, 83 Stat. 463. The 1969 amendments reduced the maximum time on duty for train employees from 16 hours to 14 hours effective immediately, with a further reduction to 12 hours automatically taking effect two years later. Congress also established provisions for determining, in the case of a train employee, whether a period of time is to be counted as time on duty. 49 U.S.C. 21103(b). In so doing, Congress also addressed the issue of deadhead transportation time, providing that ''[t]ime spent in deadhead transportation *to* a duty assignment'' is counted as time on duty. (Emphasis added). Although time spent in deadhead transportation *from* a duty assignment is not included within any of the categories of time on duty, Congress further provided that it shall be counted as neither time on duty nor time off duty. 49 U.S.C. 21103(b)(4). This provision effectively created a third category of time, known commonly as ''limbo time.''

In 1976, Congress again amended the hours of service laws in several important respects. Most significantly, Congress expanded the coverage of the laws, by including hostlers within the definition of a train employee, and adding the section providing hours of service requirements for signal employees, now codified at 49 U.S.C. 21104. Congress also added a provision that prohibited a railroad from providing sleeping quarters that are not free from interruptions of rest caused by noise under the control of the railroad, and that are not clean, safe, and sanitary, and prohibited the construction or reconstruction of sleeping quarters in an area or in the immediate vicinity of a rail yard in which humping or switching operations are performed. *See* Public Law 94–348, 90 Stat. 818 (1976).

B. History of Hours of Service Recordkeeping

With the formation of DOT and its regulatory agencies in 1966, the oversight and enforcement of the HSL was transferred from the Interstate Commerce Commission (ICC) to the newly established FRA. Prior to this transfer the ICC had enforced reporting requirements based on its May 2, 1921

order that established the records required to be maintained by carriers relating to the time on duty of employees who were involved in either the movement of trains (referred to in the current HSL as ''train employees'') or the issuance of movement authority (referred to in the current HSL as ''dispatching service employees''). The ICC Order mandated both the content and the format of the hours of service record for train employees and dispatching service employees.

The records required by the ICC Order included one titled ''Time Return and Delay Report of Engine and Train Employees.'' The format and required fields mandated for this record formed the basis for all train employee hours of service recordkeeping and reporting, and for the reporting requirements initially established by FRA for hours of service recordkeeping by railroad employees in 49 CFR part 228, and specifically § 228.11.

The ICC Order also mandated the format for a form titled ''Details of Service'', which was a required part of the train employee's hours of service record. This segment of the employee's record required the railroads to report operational data that included train number, engine number, the departure station, the time that the employee went on duty, the time the train departed, the arrival station, the time the train arrived, the time the employee went off duty, and the kind of service in which the employee was working, *i.e.*, passenger, freight, work train, or deadhead. The Details of Service form contained entries for each train with which an employee was associated during a duty tour.

As was discussed above, the 1969 amendments to the HSL addressed the issue of time spent by train employees in deadhead transportation from a duty assignment to the point of final release, establishing that such time is neither time on duty nor time off duty, which created a new category of time that has come to be known as ''limbo time.'' Following the 1969 amendments, the railroads continued to use the ICC recordkeeping formats. The ''Time Return'' portion of the recordkeeping document only provided a place to enter on-duty time and off-duty time, and could not accommodate the separate entry of limbo time. However, the railroads also continued to use the ''Details of Service'' portion, and this form became critical to proper recordkeeping. The ''Details of Service'' required train arrival and departure times, usually included comments as to when the crew had finished securing the train and therefore was relieved from covered service, and indicated the departure and arrival times of the deadhead vehicle and final release from service. With this information, it was possible to differentiate an employee's time spent on duty in covered service from time that was spent awaiting deadhead transportation and in deadhead transportation to the point of final release, which was limbo time.

The 1921 ICC Order also required records and provided recordkeeping formats for dispatching service employees, including records of dispatchers' time on duty, and records documenting train operation over the territory controlled by each dispatcher. The required records for dispatching service employees included the ''Daily Time Report of Dispatchers,'' the ''Dispatchers Record of Movement of Trains'', and for those dispatching service employees known as operators, in addition to the ''Daily Time Report of Dispatchers,'' a ''Station Record of Train Movements,'' a form that identified the operators by shift, and required the operator to list the train or engine number, along with the arrival and departure times for each train passing the specific station where the operator was located. Following the transfer of responsibilities, FRA adopted the ICC's established reporting requirements for dispatching service employees, but did not require its specific format. However, the formats and data fields are still used, even currently, by virtually all railroads that employ dispatching service employees.

As was discussed above, the Federal Railroad Safety Authorization Act of 1976 expanded coverage of the HSL to signal employees. Congress defined a signal employee as an individual employed by a railroad carrier who is engaged in installing, repairing, or maintaining signal systems. This, in effect, excluded contract signal employees from the coverage of the HSL. The statutory limitations for signal employees were very similar to those for train employees. Also, in both cases, the HSL treated the time these employees reported for duty as the time covered service began, irrespective of whether or not a covered function was actually performed. In addition, both train employees and signal employees had periods of time spent in travel to and from a duty location, some of which the HSL treated as limbo time. Also, in both cases, the HSL treated the time that one of these employees ''reports for duty'' as the time that time on duty began. Because of the similarities in their statutory provisions, the recordkeeping requirements for these two functions were also quite similar, and FRA did not need to revise its reporting requirements to establish distinct recordkeeping provisions for signal employees.

The 1921 ICC Order also stated, in part, that ''each carrier may at its option, and with the approval of the Commission, add to such records appropriate blanks for any additional information desired by it.'' Over time, railroads came to record information for employee pay claims, railroad operations and crew management on the same form that was used for hours of service recordkeeping. The combination of pay and hours of service information on the same document facilitated employee hours of service reporting practices that were greatly influenced by collective bargaining agreements and pay considerations, where differences existed between the activities for which a collective bargaining agreement required an employee to be paid, and those activities required to be reported for the purposes of the HSL. For example, an employee might report that he or she went off duty at the time that his or her paid activities ended. This would not be accurate reporting for the purposes of the HSL, if the duty tour included deadhead transportation to the point of final release. Regardless of whether an employee received additional pay for the deadhead transportation, the HSL required the time to be recorded, and the employee would not be off duty for the purposes of the HSL until after the completion of the deadhead transportation.

As technology expanded in the rail industry, some railroads in the 1980s became interested in electronically recording and reporting employee hours of service data. By the mid to late 1980s, the CSX Transportation, Inc. (CSX) had developed an automated program generated from its crew management system. CSX began using the program to generate and maintain hours of service records for its train employees. The program produced paper copies of the recorded entries for the employee's signature. Then, in 1991, CSX and the Union Pacific Railroad Company jointly presented a proposal to use an electronic record, without a signature, as the railroad's official train employee hours of service record. Section 228.9 of the existing hours of service recordkeeping regulations required that the hours of service record be signed. Therefore, it was necessary for FRA to waive the signature requirement, to allow for the development of a program that would allow the railroad and its train employees to electronically record and store hours of service information, with the employee electronically certifying the accuracy of the entered

data, so that this record would become the official hours of service record, in lieu of a signed paper record. As CSX worked to develop an electronic program for which FRA would grant a waiver, a number of issues became apparent. These issues had to be resolved to ensure that the system would have sufficient data fields to allow the employee to record the different events that occurred in his or her duty tour, to capture all of the data necessary for FRA to determine compliance with the HSL.

The concept of electronic recordkeeping presented a significant change in how employees were used to reporting their hours of service information. Data entry moved from a dynamic manual reporting method, in which a record was continually updated by the reporting employee during the course of his or her duty tour, to an automated end-of-trip report where all reporting related to a particular duty tour was made in after-the-fact entries into the railroad's computer system, after the completion of the duty tour. In addition, manual records afforded the employee flexibility to provide information about any activities that occurred during the duty tour, as well as any comments that might be necessary to understand any apparent anomalies in reported information. However, an electronic record would be limited to the data fields provided by the recordkeeping program, so it was essential that the programs were designed to provide sufficient data fields to accommodate the variety of reporting scenarios that an employee might encounter, so that the employee had the opportunity to record all relevant data for the events that occurred in his or her duty tour.

CSX's first attempt to develop an electronic recordkeeping system resulted in a program that functioned in much the same manner as a paper record, but without the comprehensive information provided by the ''Details of Service'' portion of the employee's record. It was on this portion of their record that employees recorded a number of items that were necessary for determining compliance with the HSL, including deadhead transportation either to or from a duty assignment, multiple covered service assignments, other activities performed for the carrier that constituted commingled service if not separated from covered service by a statutory off-duty period, and the distinct times that an employee was relieved from covered service, and then subsequently released from all service to begin a statutory off-duty period, which would not be the same times when limbo time was present at the end of the duty tour. In addition, the first attempt at an electronic recordkeeping system also had not considered the features of the system itself, that were necessary for ensuring the accuracy of the data and the ability of FRA to use the data to determine compliance with the HSL. These features included program logic that was necessary, for example, to calculate total time on duty from the appropriate data entered in the record, to require explanation when the total time on duty exceeded the statutory maximum, and to use program edits to identify obvious employee input errors. The mechanism for providing FRA with the ability to access the electronic records was also an issue that needed to be resolved. Because part 228, as drafted in 1972, did not contemplate the existence of electronic recordkeeping, it provided no framework for addressing these issues.

However, FRA and CSX pledged to work together through a ''test waiver'' process to develop a program with logic, edits, and access that would accommodate FRA oversight and enforcement of the current HSL provisions, and ultimately allow FRA to grant a waiver of the signature requirement, thereby allowing hours of service data to be both reported and recorded electronically. The FRA and CSX partnership eventually resulted in the development of a system containing sufficient data entry fields and system features to resolve many of the issues facing movement to electronic recordkeeping.

Another significant issue that arose in the development of electronic recordkeeping systems was providing sufficient data fields to differentiate limbo time from time spent performing covered service, which distinction was necessary to correctly determine an employee's total time on duty. The electronic programs that were initially devised required the employee to report only an on-duty time and an off-duty time, and the beginning and ending times of periods spent in transportation. The records did not include the features of the delay report that had been a part of the paper records, on which employees included their beginning and ending location, date, and time for periods spent in covered service assignments, and noted, for example, that the ending time was the time at which the employee secured the train, which completed his or her covered service on that train.

The railroads viewed this information as not being required by Part 228, but this information was regularly used by FRA in reviewing records for compliance with the HSL, and it was essential that the information continue to be captured in electronic records. Without an indication of the time that the employee stopped performing covered service, there was no way to determine when the employee stopped accumulating time on duty and when he or she began limbo time. Once the employee stopped performing covered service, limbo time began, as the time that the employee spent awaiting transportation to the point of final release, like the transportation itself, was limbo time. However, if the employee's record showed only the time that the employee reported for duty, the time spent in transportation, and the off-duty time, all of the time between reporting for duty and beginning deadhead to the point of final release would necessarily be calculated as time on duty, which could result in a record that incorrectly showed a total time on duty in excess of the statutory maximum, because limbo time was not properly reflected.

To resolve these complex issues, FRA developed a 3x3 matrix, in which an employee entered the location, date, and time for each time that he or she went on duty in covered service, the location, date, and time for each time that he or she was relieved from a covered service assignment, and the location, date, and time for each time that he or she was released from an assignment, to begin another assignment or activity, or to be released from all service to begin a period of off-duty time. This 3x3 matrix was eventually incorporated in all of the waiver-approved electronic programs.

However, deadhead transportation, and activities that constitute other service for the carrier (which may commingle with covered service) do not have relieved and released times in the activity. These activities have only a beginning and an ending time for each event. Thus, FRA also developed a second section of data entry, in which the employee reported the location, date, and time for the beginning and the ending of all non-covered service activities that are part of the employee's duty tour, but may or may not be calculated in the employee's total time on duty.

FRA and CSX continued to work together until these early issues were sufficiently resolved, and eventually, CSX was granted a waiver of the signature requirement in § 228.9. As a result, CSX was allowed to utilize an electronic recordkeeping program, in which its train employees reported their hours of service at the end of each duty tour, and those electronic records constituted the official hours of service

record for CSX train employees. As the use of electronic information systems further expanded in the industry, other railroads began developing, with assistance from FRA, electronic hours of service recordkeeping programs patterned somewhat after the original CSX program. During the development of the later programs, as well as audits of the CSX program after it was fully functioning, other issues began to surface, some of which remained topics of discussion during this rulemaking. Among those issues were the reporting of multiple covered service assignments in a duty tour, and administrative duties performed after the twelfth hour on duty.

Multiple-train duty tours have occurred in the railroad industry for decades. As was discussed above, employees used the ''Details of Service'' section of the paper hours of service record to provide the times spent in covered service on each train to which the employee was assigned, and on each train on which the employee may have been in deadhead transportation, whether that deadhead transportation was transportation to the first covered service assignment of a duty tour, transportation from one covered service assignment to another within a duty tour, or transportation to the point of final release at the end of a duty tour. For many years, employees diligently reported each train to which they were assigned or on which they deadheaded, because employees were paid for a minimum 100-mile day for each such train. However, as collective bargaining agreements evolved, and employees were instead paid on the basis of actual miles run, it became more common to use a single crew to handle multiple trains.

In the development of electronic programs, FRA was concerned that the programs initially lacked the ability to segment the employee's record by train, for data entry and program logic purposes, as well as for inspection and enforcement purposes. If an employee did not report individually the locations, dates, and times that he or she went on duty, was relieved, and was released for each covered service assignment in a multiple-train duty tour, the program read the data as if the employee had worked on one train with a lengthy and continuous period of time on duty, often in excess of the statutory 12-hour limit when a statutory interim release was present. In addition, FRA inspections yielded records that did not present all crew members assigned to a particular train, or in which trains appeared to disappear at one point on line-of-road and reappear at another point, suggesting that a record was missing in the database.

Because all of the existing and developing programs were tied to the railroad's crew management, FRA proposed that railroad crew management initiate a separate call for each assignment, so that each would have a data entry screen created to differentiate between multiple covered service assignments in a duty tour. The railroads resisted this proposal because the additional calls would increase the level of work for crew dispatchers. The railroads also expressed concerns about collective bargaining issues regarding pay claims for each call. FRA noted, however, that there was past historical precedent for employees completing a separate report for each assignment, although there were pay-related reasons for doing so which were not now always present. However, this dispute led to a solution which would not require additional crew dispatcher involvement. Programs were designed to allow the employee to use a function key to access additional reporting screens for reporting multiple trains or non-covered service activities. This feature of the programs mimicked the manner in which employees previously added additional forms to reflect multiple assignments prior to electronic recordkeeping. Once the crew dispatcher has called a crew to duty on one train or job and has established the employee's initial reporting screens, the employee may work multiple assignments at the discretion of the railroad and report the activities involved in each train without the crew dispatcher having to take any further action to create another call to establish the necessary additional reporting screens. This feature not only allows the employee to report the actual events of his or her duty tour, but also allows the program's FRA Inspection System to identify and present records based on train identification.

As was noted above, one of the many ways in which electronic recordkeeping represents a significant change in the way that employees report their time is that with electronic recordkeeping programs, all reporting is accomplished at time of tie-up, just prior to the employee's being released from all service to the carrier to begin a statutory off-duty period, the electronic record thereby becoming an ''end-of-trip report.'' In contrast, manual records maintained by the reporting employee allowed the employee to periodically add information to the record while continuing with the activities of his or her duty tour. Then, when the reporting employee reached his or her point of final release, he or she would complete the reporting, sign the record, and place it in the appropriate collection receptacle. Also, any other reporting or recording activities, including payroll, or other data beyond hours of service for the benefit of either the railroad or the employee, were completed at this time. As long as the reporting employee had not reached the statutory limits for the duty tour, he or she was allowed to take as long as necessary to complete any reporting, recording, and other administrative duties. However, in the event that the reporting employee was at or beyond his or her statutory limits, FRA had a long standing policy of exercising prosecutorial discretion to allow a few minutes for the reporting employee to complete his or her administrative duties.

However, as railroads moved to electronic recordkeeping, the reporting employee could not begin reporting any of his or her train operation, pay and hours of service data in an electronic program prior to arrival at his or her final terminal, so the time involved in completing the necessary reporting might exceed a few minutes, especially if a large amount of work order reporting or other documentation beyond hours of service was required. Railroad labor organizations challenged FRA's practice of allowing a few minutes in excess of the 12-hour statutory maximum time on duty to complete administrative duties. FRA recognized the validity of these concerns, but also recognized the need for certain information at the conclusion of the duty tour to ensure compliance with the HSL. The railroad must know both the time that an employee is relieved from covered service, and the time that the employee is released from all duties, in order to determine the minimum off-duty period that the employee required under the HSL, when to start the statutory off-duty period, and at what time the employee would have completed the minimum required rest to remain in compliance with the HSL. Because the employee is the one with first-hand knowledge of these times as applied to his or her own duty tour, FRA believed that the employee was best suited to certify the accuracy of these times.

FRA convened a Technical Resolution Committee (TRC) in 1996 to resolve this issue. Initially, the TRC leaned toward limiting the employee initiated tie-up to just a relieved time and a released time. Ultimately, however, two additional items were included, which were necessary to both the railroads and the employees from an operational perspective. Because many collective

bargaining agreements contained provisions for how and when an employee would be placed back in a pool or on an extra board following tie-up, both the railroad and the employee needed to be aware of the employee's placement time before the employee began the statutory off-duty period. Finally, FRA allowed the employee to enter information to provide a contact number, if different from the number on record, to ensure that the railroad could contact the employee regarding his or her next assignment.

With these four items (a relieved time, a released time, a board placement time, and a contact number, if different from that of record), FRA believed that the railroad would have sufficient information to know when the employee could legally next be called to duty. Although the HSL does not authorize performance of any administrative duties in the period beyond the employee's statutory maximum, FRA announced a policy that allowed an employee who was being released from a duty tour to begin a statutory off-duty period after more than 12 hours of total time on duty (including limbo time) to complete a ''quick tie-up'' limited to entering and certifying these four items. The quick tie-up was not intended for use when the employee had time remaining within the statutory limits to complete a full record at the end of the duty tour. The intention was to require the employee whose duty tour had reached or exceeded the statutory limits to perform only the minimum administrative duties necessary to determine when the employee would next be available to be called for duty. If the railroad did not require the employee to perform any other administrative duties in addition to the quick tie-up, FRA would exercise its prosecutorial discretion and not prosecute the railroad for requiring the employee to perform administrative duties beyond the employee's statutory limits. FRA allowed the completion of any record in which only quick tie-up information had been entered prior to the statutory off-duty period, when the employee returned to duty. FRA announced this policy in a Technical Bulletin OP No. 96–03 (since renumbered as OP 04–27). After this policy was announced, railroads developed data entry screens that allowed employees to enter and certify only the quick tie-up information when appropriate, allowing the completion of the record when the employee next reported for duty. Electronic recordkeeping systems were also designed to require completion of the full record before it could be certified if the employee had not reached the maximum statutory limit for the duty tour.

In addition to the many issues related to ensuring that the developing electronic recordkeeping systems allowed the employees to enter sufficient data to determine compliance with the HSL, there were also issues to be resolved as to how FRA would access the system and the records that it created. The initial proposal from CSX provided that an officer would log into the railroad's network using his or her identification number (ID) and password and access the employees' entry screens. The officer would then turn over the computer to the FRA Inspector, who would directly review all of the data entered by the employee. This procedure presented a security issue that FRA wanted to avoid. Instead, CSX developed an inspection system that was available only to FRA inspectors through the use of unique FRA IDs and passwords that allowed FRA inspectors to access and retrieve only hours of service records, using a combination of selection criteria to retrieve a specific record or group of records. Selection criteria for records searches were: By employee name or ID; by train or job; and by location (which could include a yard, a subdivision or division (service unit) or other railroad area), combined with a date or date range. Another option for the FRA or participating State inspector is to search for records reporting in excess of 12 hours total time on duty, combining this with a date or date range, and possibly other selection criteria. Combinations of the ''optional'' fields can narrow a selection to a precise time frame. This method of access allowed FRA to ensure that the hours of service records were protected from alteration and unauthorized access, which would not be possible if the same method of access allowed access to other railroad data, which FRA could not restrict.

The unique FRA IDs and passwords are not permanently assigned to a specific FRA Inspector, but are given out upon the request of an inspector prior to an inspection. Passwords are temporary, and expire in seven days or less. Upon arrival at the rail facility, the FRA Inspector contacts the local railroad officer and presents his or her credentials for verification. The inspector is then provided the necessary ID and password and assigned a computer terminal with printer capabilities for use during his or her inspection.

Using the selection criteria, FRA could retrieve records in a manner that was crew based and duty tour oriented, even if employees each reported individually. This meant that the records for all members of a requested train or job were displayed together. In addition, if a duty tour involved multiple covered service assignments, the whole crew would be displayed for each train or job ID, and all records for a given duty tour would be displayed together, with total time on duty for the entire duty tour displayed on the last record of a multiple covered service assignment duty tour.

In the early stages of program development with CSX, FRA began to develop a guide for electronic recordkeeping, which has been used for several years to assist railroads in developing electronic recordkeeping programs for which FRA might likely grant waiver approval. The guide has been used successfully for approximately 15 years. The requirements for electronic recordkeeping systems imposed by this regulation are largely based on the guide and the resulting waiver-approved programs currently in existence.

At present, four Class I carriers (CSX, Norfolk Southern Railway Company, Union Pacific Railroad Company, and Canadian National Railway) have waiver authority to use their existing electronic hours of service recordkeeping programs to record and report the official hours of service records for their train employees. There are no waiver-approved electronic recordkeeping programs for the records of signal employees or dispatching service employees, although there has been interest in moving to electronic recordkeeping for these employees, and there are some programs in various stages of development.

II. Rail Safety Improvement Act of 2008

Section 108 of the Rail Safety Improvement Act of 2008 (Pub. L. 110–432), substantively amends the HSL in a number of ways. It also provides the statutory mandate for this rulemaking, because it requires that FRA revise its hours of service recordkeeping requirements to take into account these substantive changes, as well as to provide for electronic recordkeeping and to require training.

A. Substantive Amendments to the HSL

Effective July 16, 2009, section 108(a) amends the definition of ''signal employee'', to eliminate the words ''employed by a railroad carrier.'' With this amendment, employees of contractors or subcontractors to a

railroad who are engaged in installing, repairing, or maintaining signal systems (the functions within the definition of signal employee in the HSL) will be covered by the HSL, because a signal employee under the HSL is no longer by definition only a railroad employee.

Section 108(b) amends the hours of service requirements for train employees in many ways, all of which are effective July 16, 2009. The provision limits train employees to 276 hours of time on-duty, awaiting or in deadhead transportation from a duty assignment to the place of final release, or in any other mandatory service for the carrier per calendar month. The provision retains the existing maximum of 12 consecutive hours on duty, but increases the minimum off-duty period to 10 hours consecutive hours during the prior 24-hour period.

Section 108(b) also requires that after an employee initiates an on-duty period each day for six consecutive days, the employee must receive at least 48 consecutive hours off duty at the employee's home terminal, during which the employee is unavailable for any service for any railroad; except that if the sixth on-duty period ends at a location other than the home terminal, the employee may initiate an on-duty period for a seventh consecutive day, but must then receive at least 72 consecutive hours off duty at the employee's home terminal, during which time the employee is unavailable for any service for any railroad.

Section 108(b) further provides that employees may also initiate an on-duty period for a seventh consecutive day and receive 72 consecutive hours off duty if such schedules are provided for in existing collective bargaining agreements for a period of 18 months, or after 18 months by collective bargaining agreements entered into during that period, or a pilot program that is either authorized by collective bargaining agreement, or related to work rest cycles under section 21108 of the HSL.

Section 108(b) also provides that the Secretary may waive the requirements of 48 and 72 consecutive hours off duty if a collective bargaining agreement provides a different arrangement that the Secretary determines is in the public interest and consistent with safety.

The RSIA of 2008 also significantly changes the hours of service requirements for train employees by establishing for the first time a limitation on the amount of time an employee may spend awaiting and in deadhead transportation. These new requirements, also found in section 108(b), provide that a railroad may not require or allow an employee to exceed 40 hours per month awaiting or in deadhead transportation from duty that is neither time on duty nor time off duty in the first year after the date of enactment, with that number decreasing to 30 hours per employee per month after the first year, except in situations involving casualty, accident, track obstruction, act of God including weather causing delay, derailment, equipment failure, or other delay from unforeseeable cause. Railroads are required to report to the Secretary all instances in which these limitations are exceeded. In addition, the railroad is required to provide the train employee with additional time off duty equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours.

Finally, section 108(b) restricts communication with train employees except in case of emergency during the minimum off-duty period, statutory periods of interim release, and periods of additional rest required equal to the amount that combined on-duty time and time awaiting or in transportation to final release exceeds 12 hours. However, the Secretary may waive this provision for train employees of commuter or intercity passenger railroads if the Secretary determines that a waiver would not reduce safety and is necessary to efficiency and on time performance.

However, section 108(d) of the RSIA of 2008 provides that the requirements described above for train employees will not go into effect on July 16, 2009 for train employees of commuter and intercity passenger railroads. This section provides the Secretary with the authority to issue hours of service rules and orders applicable to these train employees, which may be different than the statute applied to other train employees. It further provides that these train employees will continue to be governed by the HSL as it existed prior to the RSIA of 2008 until the effective date of regulations promulgated by the Secretary. However, if no new regulations have been promulgated before October 16, 2011, the provisions of section 108(b) would be extended to these employees at that time.

Section 108(c) of the RSIA of 2008 amends the hours of service requirements for signal employees in a number of ways, effective July 16, 2009. As was noted above, by amending the definition of ''signal employee,'' it extends the reach of the substantive requirements to a contractor or subcontractor to a railroad carrier and its officers and agents. In addition, as section 108(b) does for train employees, section 108(c) retains for signal employees the existing maximum of 12 consecutive hours on duty, but increases the minimum off-duty period to 10 consecutive hours during the prior 24-hour period.

Section 108(c) also eliminates language in the HSL stating that last hour of signal employee's return from final trouble call is time off duty, and defines ''emergency situations'' in which the HSL permits signal employees to work additional hours not to include routine repairs, maintenance, or inspection.

Section 108(c) also contains language virtually identical to that in section 108(b) for train employees, prohibiting railroad communication with signal employees during off-duty periods except for in an emergency situation.

Finally, section 108(c) provides that the hours of service, duty hours, and rest periods of signal employees are governed exclusively by the HSL, and that signal employees operating motor vehicles are not subject to other hours of service, duty hours, or rest period rules besides FRA's.

Section 108(e) specifically provides FRA a statutory mandate to issue hours of service regulations for train employees of commuter and intercity passenger railroads. It also provides FRA additional regulatory authority not relevant to the present rulemaking, and requires FRA to complete at least two pilot projects.

B. Rulemaking Mandate

Section 108(f) requires the Secretary to prescribe a regulation revising the requirements for recordkeeping and reporting for Hours of Service of Railroad Employees contained in part 228 of title 49, Code of Federal Regulations to adjust recordkeeping and reporting requirements to support compliance with chapter 211 of title 49, United States Code, as amended by the RSIA of 2008; to authorize electronic recordkeeping, and reporting of excess service, consistent with appropriate considerations for user interface; and to require training of affected employees and supervisors, including training of employees in the entry of hours of service data.

Section 108(f) further provides that the regulation must be issued not later than 180 days after October 16, 2008, and that in lieu of issuing a notice of proposed rulemaking as contemplated by 5 U.S.C. 553, the Secretary may utilize the Railroad Safety Advisory Committee (RSAC) to assist in development of the regulation.

III. Railroad Safety Advisory Committee Process

A. Overview of the RSAC

In March 1996, FRA established RSAC, which provides a forum for developing consensus recommendations to FRA's Administrator on rulemakings and other safety program issues. The Committee includes representation from all of the agency's major customer groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of member groups follows:

- American Association of Private Railroad Car Owners (AARPCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Public Transportation Association (APTA);
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers' Association (ATDA);
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);
- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employees Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Railroad Administration (FRA);
- Federal Transit Administration (FTA)*;
- Fertilizer Institute;
- High Speed Ground Transportation Association (HSGTA);
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers (IBEW);
- Labor Council for Latin American Advancement*;
- League of Railway Industry Women*;
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women*;
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRC);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB)*;
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte*;
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada*;
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA)*; and
- United Transportation Union (UTU).

* Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. If a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to FRA. FRA then determines what action to take on the recommendation. Because FRA staff play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal, is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. If the working group or RSAC is unable to reach consensus on a recommendation for action, FRA moves ahead to resolve the issue through traditional rulemaking proceedings.

B. RSAC Proceedings in This Rulemaking

Given the time constraints within which FRA was required to issue this regulation, FRA decided to request the assistance of the RSAC in developing it, in order to take advantage of the provisions of the statutory mandate which allowed FRA to proceed to a final rule, without having first issued a notice of proposed rulemaking. FRA proposed Task No. 08–06 to the RSAC on December 10, 2008. The RSAC accepted the task, and formed the Hours of Service Working Group (Working Group) for the purpose of developing the hours of service recordkeeping regulations required by section 108(f) of the RSIA of 2008.

The Working Group was comprised of members from the following organizations:

- AASHTO
- Amtrak;
- APTA;
- ASLRRA;
- ATDA;
- AAR, including members from BNSF Railway Company (BNSF), Canadian National Railway Company (CN), Canadian Pacific Railway, Limited (CP), CSX Transportation, Inc. (CSXT), Iowa Interstate Railroad, Ltd. (IAIS), Kansas City Southern (KCS), Norfolk Southern Corporation (NS), and Union Pacific Railroad Company (UP);
- BLET;
- BRS;
- Federal Railroad Administration (FRA);
- IBEW
- Long Island Rail Road (LIRR);
- Metro-North Commuter Railroad Company (Metro-North);
- Southeastern Pennsylvania Transportation Authority (SEPTA);
- Tourist Railway Association; and
- UTU.

The Working Group completed its work after four meetings and two conference calls. The first meeting of the Working Group took place on January 22–23, 2009, in Washington, DC. Subsequent meetings were held on February 4–6, 2009, February 18–20, 2009, and March 23–24, 2009, each also in Washington, DC. Conference calls were held on March 30 and March 31, 2009. The Working Group achieved consensus on the rule text with the exception of one issue. The group's recommendation, including the one area of non-consensus, was presented to the full RSAC on April 2, 2009, and the full RSAC accepted its recommendation. This regulation is consistent with the recommendation of the Working Group, with the exception of the issue on

which the group failed to reach consensus.

Prior to the first meeting of the Working Group, FRA distributed draft rule text to provide a framework for the discussions. This enabled the group to focus its discussions on those issues with which the other members of the group disagreed or had concern. The issues that led to significant discussion and subsequent changes in the initial rule text can generally be characterized in one of four ways: (1) Disagreement of members of the Working Group with some aspects of FRA's current approach to electronic recordkeeping that had been mirrored in the draft rule text; (2) concern about making the requirements for electronic recordkeeping systems sufficiently flexible to accommodate the circumstances of those groups of employees who are not currently reporting and recording their hours of service electronically, but may do so in the future; (3) concern about the burden of some of the recordkeeping requirements on those railroads or contractors or subcontractors to a railroad who use paper records; and (4) concerns about FRA's interpretation of the substantive provisions of the HSL that have an effect on recordkeeping, including new issues arising from the RSIA of 2008, as well as other substantive interpretations that some members of the group wished to have clarified or urged FRA to change. The most significant of these issues will be discussed in this section. Other subjects of discussion within the working group will be discussed in the section-by-section analysis of the language to which they relate.

1. Multiple-Train Reporting

As was discussed in section IB, above, of the preamble, FRA required that electronic recordkeeping programs for which it granted a waiver would require the employee to report each assignment in a duty tour. In brief, FRA's reason for this approach was that it allowed FRA to search for records by the job or assignment, and to retrieve the full records of each employee on that assignment, so that they could be cross-referenced against each other. This approach also allowed the system to link the records for each assignment in a duty tour, so that an employee's prior time off before an assignment would indicate whether it was preceded by another assignment, or was the first assignment following a statutory off-duty period. Thus, the full duty tour would be represented, without gaps in the data that would suggest a missing record. This approach was also consistent with the way that FRA had historically reviewed paper records, because this information was available on the ''Details of Service'' portion of the form, which the railroads had since stopped using because of changes in pay structures and other operational issues, and which they, therefore, resisted incorporating in electronic recordkeeping.

AAR objected to the requirements initially included by FRA in § 228.11(b) of this rule, because FRA required the employee to report the beginning time, relieved time, and released time of each assignment in a duty tour, as it had in the waiver-approved electronic programs. AAR contended that FRA did not need this level of detail for each assignment because the time was all counted as time on duty, and also contended that the requirements were too burdensome because of the number of data fields that an employee would be required to enter, and the amount of time that this data entry could consume.

During the working group proceedings, FRA made a number of concessions from its original language. FRA excluded from the requirement to list each assignment employees having several kinds of assignments likely to result in their handling a large number of trains in a single duty tour. Specifically, FRA excluded utility employees, employees assigned to yard jobs, and assignments established to shuttle trains into and out of a terminal that are identified by a unique job or train symbol as such an assignment. When AAR continued to object to these requirements, FRA limited them further, by requiring only that the employee record the first train and the last train to which he or she was assigned, and any train immediately preceding or immediately following a period of interim release. FRA reasoned that information was needed regarding assignments before and after a period of interim release, so that the interim release period, which would not count toward total time on duty, could be determined. FRA agreed that it would not require the recording of trains in the middle of a duty tour that were not associated with an interim release, agreeing in those limited circumstances to resort to other methods of piecing together the duty tour if necessary.

Ultimately, however, AAR wanted FRA to require that the employee record only the beginning time of the first train and any train following a period of interim release, and only the relieved time and released time of any train preceding a period of interim release and the last train in a duty tour. The limited issue of the specific requirements to record the relieved time and released time for an employee for the first train in the employee's duty tour and for any train preceding a period of interim release by the employee, and the beginning time of the last train or any train following a period of interim release for the employee, was the only area of non-consensus during the working group proceedings and before the full RSAC.

Following the RSAC vote, FRA decided to further modify the requirements of section 228.11(b). This paragraph now requires that an employee record only the beginning time of the first train and any train following a period of interim release, and only the relieved time and released time of any train preceding a period of interim release and the last train in a duty tour, as requested by AAR. It also requires, however, that employees report the train ID for each train required to be reported. Utility employees, employees assigned to yard jobs, and assignments established to shuttle trains into and out of a terminal that are identified by a unique job or train symbol as such an assignment, are excluded from the requirement to report separate train IDs. In addition, this paragraph requires employees to report periods spent in deadhead transportation from a duty assignment to a period of interim release, and from a period of interim release to a duty assignment.

2. Pre-Population of Data

AAR proposed elimination of the concept of the quick tie-up. As was discussed above, the quick tie-up is a feature that allows an employee who is at or beyond the statutory maximum time on duty to report only the four items necessary for the employee and the railroad to determine the beginning of the statutory off-duty period and for the railroad to be allowed to call the employee for the next duty tour. The employee completes the remainder of the record for any duty tour ended with a quick tie-up when he or she next reports for duty. AAR suggested that the regulation instead limit those items required for a full tie-up, or a complete record, and allow those items that are required to be pre-populated on the record by the railroad, so that the time required for a full tie-up would be decreased. FRA could not agree to limit the required data as AAR suggested. In addition, there are a number of items not related to hours of service (such as pay claims and details as to the cars in the train) that are normally a part of a full tie-up, but which FRA does not believe should be required of an employee who is at or near the statutory

maximum time on duty. Therefore, the group agreed not to eliminate the quick tie-up, but continued to discuss the concept of pre-population of the data on the hours of service record.

FRA did not allow pre-population of data as electronic recordkeeping programs were developed during the waiver process, because when pre-population was attempted, records were pre-populated with data from sources not likely to be accurate reflections of the duty tour, such as payroll or other times related to collective bargaining. The Working Group spent substantial time discussing which data fields on the record might be pre-populated. However, the group could not agree on data fields that always may be pre-populated, or those that never should, as a wide variety of factors might affect whether pre-population of certain data is appropriate for a particular employee or assignment. It was generally agreed, however, that pre-population could reduce the time and effort required for completion of the record if the data was reliable.

The group reached a compromise, reflected in section 228.203(a)(1)(i) of this regulation. This paragraph provides that a record may be pre-populated with data known to be factually accurate for a specific employee. Estimated, historical, or arbitrary data are not to be used to pre-populate data in a record. However, a railroad, or a contractor or subcontractor to a railroad, is not in violation of this requirement if it makes a good faith judgment as to the factual accuracy of data for a specific employee but the pre-populated data turns out to be incorrect. In addition, the employee must be able to make any necessary changes to pre-populated data by simply typing into the data field, without having to access another screen or obtain clearance from the railroad. Finally, this paragraph also provides that an electronic recordkeeping system may provide the ability for an employee to copy data from one field of a record to another where appropriate.

3. Tie-Up Procedures for Signal Employees

Labor representatives in the Working Group, and particularly representatives of the Brotherhood of Railroad Signalmen, expressed concern that the requirements for electronic recordkeeping systems were not appropriate to the way that signal employees tie up at the end of a duty tour, and complete their records. Although there are currently no waiver-approved programs allowing electronic recordkeeping by signal employees, there are some systems currently under development, and railroads and signal employees are interested in moving to electronic recordkeeping. The requirements for electronic recordkeeping systems as originally drafted by FRA were based on the past experience of FRA and the industry with electronic recordkeeping, which was admittedly limited to train employees.

During the Working Group discussions, it was pointed out that signal employees tie up differently, and some of the limitations on the system that are appropriate for train employees would not allow signal employees to complete their records. Unlike train employees, signal employees are not usually released from their duty tour at a location where there is likely to be a computer available to complete a record, because they often travel home from their duty location, and do not go by way of a railroad headquarters. In addition, signal employees may not tie-up on a daily basis, rather, they may complete a number of records at one time, on a day when they have time in their schedule to prepare this paperwork. Signal employees do not generally need to do a quick tie-up to know when they are eligible to return to duty, because they have a scheduled eight-hour shift. They do call into the trouble desk if they work beyond their scheduled hours, or after returning from a trouble call. Although the primary purpose of this call is to report the nature of the trouble that was found and what was done to fix it, the employee also reports the time that he or she completed the work, and this allows the railroad to determine if the employee has enough time remaining to respond to another trouble call, or if a late trouble call causes the employee not to be rested for the beginning of the next scheduled shift.

FRA agrees that the regulation should establish requirements appropriate to all employees, so that the regulation will not need to be revised to reflect future systems that may be developed. To accommodate the differences in the reporting practices of signal employees, FRA modified several paragraphs of § 228.203(c). Paragraph (c)(7) of § 228.203 allows an employee to certify a release time in the past compared to the clock time of the computer, except for the current duty tour being concluded, so that a signal employee may complete multiple records at one time. This limitation is not a problem for train employees, who will have provided a release time through the quick tie-up for any record being completed that relates to a previous duty tour. The rule text also excludes signal employees from the scope of requirements in subparagraphs that provide that electronic recordkeeping systems must require employees to complete a full record, and disallow a quick tie-up at the end of any duty tour in which the employee has less than the statutory maximum time on duty. Even with less than the statutory maximum time on duty, a signal employee may not complete any record at the end of that duty tour, or may complete a form of quick tie-up through communication regarding trouble calls and how much time the employee has remaining to work.

FRA notes that railroads, contractors and subcontractors to railroads, and signal employees will need to have some way of keeping track of when the employee goes off duty, to ensure that they receive the 10 hours uninterrupted rest required by the RSIA of 2008.

4. Tracking Cumulative Totals Toward the 276-Hour Monthly Maximum Limitation

Section 228.11(b)(14) requires that a train employee record include the cumulative total for the calendar month of time spent in covered service, awaiting or in deadhead transportation from a duty assignment to the place of final release, and time spent in any other service at the behest of the railroad, the elements that make up the cumulative total for the month toward the 276-hour limitation. Members of the Working Group representing the Class III railroads pointed out that compliance with this requirement would be much more complicated for those employees completing paper records. Electronic recordkeeping systems will likely be programmed to calculate the cumulative monthly total, but it will be more difficult for an employee to have to keep track of the running total and note it on his or her signed record each day. FRA is persuaded that this could be burdensome, and could result in inaccurate reporting of the totals, and could possibly cause an employee to inadvertently exceed the monthly limitations by calculating it inaccurately and certifying that number. Therefore, FRA agreed to allow Class III railroads to track the cumulative total throughout the month, note it on the records, and make it available to FRA. The employee will be expected to certify the monthly total promptly after the end of the month.

5. Multiple Reporting Points

This regulation requires that each train employee have a regular reporting point. In numerous locations across the railroad system, railroads and their

employees have established more than one location within a designated terminal that the employees may directly report to, essentially treating multiple locations located near each other as one regular reporting point. In enforcing this regulation, FRA will continue to treat these multiple locations as constituting a single regular reporting point, provided that (a) it can reasonably be expected that doing so would not unduly affect fatigue and (b) if the railroad is unionized, the multiple reporting points have been agreed to under a collective bargaining agreement. When determining whether or not fatigue is unduly affected, FRA will take into account the distance between the multiple locations, traffic patterns (*e.g.,* rural vs. urban), and other relevant factors.

As has been discussed, the RSIA of 2008 amends the definition of ''signal employee'' so that employees of a contractor or a subcontractor to a railroad performing maintenance, inspection, or repair of signal systems are covered by the HSL. The railroads in the Working Group expressed concern that they would be responsible for keeping records for contract signal employees who perform work on their property. This would be particularly difficult if the contractors or subcontractors are hired for specific short-term assignments or projects. FRA expects that the contractor or subcontractor who employs the employee would be responsible for his or her records, because that company would know when the employee would be properly rested under the statute to begin a new assignment, which might be on a different railroad than the assignment just completed. It should be noted, however, that since the substantive provisions of the HSL still prohibit either requiring or allowing an employee to remain or go on duty, FRA may take enforcement action for violation of the statute against either the employer or the railroad for whom the employee is performing covered service, depending on the facts of the situation.

FRA has amended language throughout this part that imposes recordkeeping duties on a railroad, so that those duties are imposed on a railroad or a contractor or a subcontractor to a railroad. However, FRA recognizes that some railroads have kept hours of service records and reported excess service for contractors and subcontractors who were covered by the HSL prior to the RSIA of 2008, particularly as train employees. FRA does not intend to prohibit such practices, if the parties have contracted to have the railroad for which an employee performs covered service handle the recordkeeping and reporting responsibilities for that employee.

IV. Section-by-Section Analysis

Section 228.1 Scope

FRA has revised this section to reflect the fact that the regulation prescribes reporting and recordkeeping requirements for employees of railroad contractors and subcontractors as well as for railroad employees.

Section 228.3 Application

FRA has revised this section to reflect the fact that the regulation applies to railroad contractors and subcontractors as well as to railroads, and does not apply to the contractors and subcontractors of railroads to which the regulation does not apply.

Section 228.5 Definitions

This section is amended to add a large number of definitions relevant to compliance with the HSL, and the recordkeeping and reporting requirements of this part, including the data fields found on an hours of service record, the data required to be entered, and the proper calculation and representation of the periods of time which must be identified on a record. Most of these definitions have been used by FRA and the industry for many years and have a common understanding. Some are discussed in existing Operating Practices Technical Bulletins providing FRA's position on substantive issues of enforcement under the HSL. As a result, while the Working Group recommended minor revisions to a number of the definitions to clarify them, relatively few caused concern among Working Group members or required significant discussion.

The Working Group discussed the definition of ''actual time,'' which can refer to either a specific time of day, or a precise amount of time. FRA's intention with this definition is to make clear that any time related to an activity that is entered on an hours of service record should represent the actual time that the activity occurred or actual amount of time spent in the activity, rather than scheduled or estimated times or amounts of time that may be used for pay and collective-bargaining-related purposes. Records must also not show non-specific numbers in reference to data fields that correspond to specific statutory limitations. For example, it would not be correct simply to indicate ''10+'' in the prior time off field, rather than the actual amount of time in hours and minutes that the employee had been off before beginning an assignment, or ''12+'' for total time on duty, rather than the actual total amount of time that the employee was on duty.

The Working Group also discussed the definition of ''commuting,'' and specifically the portion of the definition that applies to train employees. The first part of the definition led to discussions related to an employee's regular reporting point, because only travel between an employee's residence and his or her regular reporting point is considered commuting. As was discussed in section III, above, of the preamble, FRA acknowledges that it will treat multiple locations within a designated terminal as a single reporting point in certain circumstances. However, the definition of ''commuting'' is not changed. The second part of this definition as applied to train employees provides that travel in railroad-provided transportation to a lodging facility at an away-from-home terminal is considered commuting if the time does not exceed 30 minutes. The ''30 minute rule'' is longstanding FRA policy, intended to provide railroads some flexibility to get their employees to lodging, but limiting the potential erosion of an employee's statutory off-duty period that could result from extended periods of travel to the away-from-home lodging facility. Nothing in the RSIA of 2008 would require FRA to change its position on this issue, and FRA declines to do so.

FRA defines designated terminal for purposes of this section by copying the definition of the term found in the HSL at 49 U.S.C. 21101. It is necessary to define this term because any period of interim release that a train employee has during a duty tour is considered off-duty time under the HSL only if the release occurs at a designated terminal. Otherwise, the time must be calculated as on-duty time. FRA's position regarding designated terminals has been previously published in Appendix A of this regulation, and further established through extensive litigation related to this issue. By including this definition, FRA does not intend to alter any of its previous statements related to this issue, including the fact that FRA does not exercise jurisdiction over any lodging facilities used to house railroad employees that are not railroad-provided, and are usually subject to collective bargaining.

This section defines the terms ''reporting point,'' ''regular reporting point'' and ''other than regular reporting point.'' As was discussed in section III, above, of the preamble, and in this section, in regard to the definition of commuting, an employee has only one regular reporting point at any given

time. Travel from the employee's regular reporting point to any other reporting point on the railroad is considered a deadhead to a duty assignment, in which the time spent deadheading to duty is time on duty, and if an employee travels directly from his or her residence to a reporting point that is other than his or her regular reporting point, any time spent in that travel exceeding the time that would have been spent in travel to the regular reporting point is also time on duty. As was discussed in section III, above, of the preamble, FRA will consider multiple locations within a designated terminal to be a single reporting point in certain circumstances. This interpretation does not change the definitions of the terms ''reporting point,'' ''regular reporting point,'' or ''other-than-regular reporting point,'' this simply means that if an employee's regular reporting point is any one of the locations that constitute a single reporting point, an assignment to report to any location that is considered part of that single reporting point would be considered reporting to the regular reporting point for that employee.

The Working Group discussed the definition of ''release'' as it applies to signal employees. A release is a period of more than an hour but less than a statutory off-duty period, after a signal employee completes regular assigned hours, or completes return travel from a trouble call. Members of the Working Group representing the interests of signal employees commented that a release should not just consist of an employee being told to go and wait at a nearby restaurant until he or she is needed for another assignment, but should allow an employee to come and go as he or she pleases in order to be considered off-duty time. FRA notes that the HSL does not define the release period for signal employees as ''interim release'' is defined for train employees, providing that the period of release constitutes off-duty time only if it is at a designated terminal. However, it is certainly consistent with the statutory purpose to require a railroad, or contractor or subcontractor to a railroad, to provide as much opportunity for food, rest, and freedom of activity for the employee as circumstances will allow during any release period that is to be considered off-duty time.

The Working Group also discussed the distinction between the defined terms, ''prior time off'' and total off-duty period. As indicated in the definition of ''total off-duty period,'' it may differ from a computer-generated prior time off, which would be calculated based on the release time of the previous duty tour, if the employee performed an activity between duty tours that was required to be reported as other service at the behest of the railroad. Under § 228.11(b)(8), (d)(6) and (e)(9), the employee must record any such service, and it would be recorded on the hours of service record created for the next duty tour as an activity at the behest of the railroad. Prior time off would be calculated as the sum of the time between the previous final release and the beginning of that activity and the time between the end of the activity and the beginning of the next duty tour. The total time spent in the activity, plus the prior time off before and after the activity should equal the system-known prior time off.

There were a number of questions discussed in the Working Group related to the definitions of ''dispatching service employee,'' ''signal employee,'' and ''train employee.'' These definitions are copied directly from the HSL at 49 U.S.C. 21101, and are included in this regulation simply for ease of reference, since the terms are used throughout the rule text. The questions surrounding these definitions related to whether employees with certain job titles, or who perform certain job functions, would be included within the scope of the definitions. These questions present issues of substantive interpretation of the HSL, and have been addressed in published interpretations in Appendix A of this rule and various Operating Practices Technical Bulletins. The only change in these definitions made by the RSIA of 2008 is to amend the definition of ''signal employee'' so that it applies to employees of contractors or subcontractors to a railroad who perform the functions of a signal employee. Therefore, FRA's position remains unchanged with respect to these issues, except to the extent that FRA has ever indicated prior to the enactment of the RSIA of 2008 that employees of contractors or subcontractors performing the functions of a signal employee are not covered by the HSL, because that would no longer be FRA's position, in light of the statutory changes.

In determining whether a given employee is covered by the HSL, FRA continues to take a functional approach, rather than one based on job or craft title. If an employee performs functions included within the definition of a dispatching service employee, a signal employee, or a train employee, that employee is covered under the HSL as that type of employee, and must observe the relevant statutory limitations and recordkeeping requirements, regardless of the employee's actual job title. For example, an employee whose job title is Yardmaster may be covered under the HSL as any one of three categories of covered employees, or he or she may not be covered by the HSL at all, depending on the functions performed. By the same token, if an employee performs functions that are typically performed by employees who are covered by the HSL, but the specific function is not itself covered, performing that function does not bring the employee under the coverage of the HSL. For example, if an employee removes orders from a printer, that function alone does not make the employee a dispatching service employee, even if that function is usually performed by a dispatcher, because this action alone does not constitute dispatching, reporting, transmitting, receiving or delivering an order affecting train movement.

Section 228.9 Records; General

This section is revised to eliminate the signature requirement for records maintained electronically. Paragraph (a) applies only to manual records, and retains the text of § 228.9 prior to this regulation. Paragraph (b), which is added to this section, provides that an electronic record must be certified and electronically stamped with the certifying employee's name and the date and time of certification. Both paragraphs contain requirements for retention of and access to the records. Finally, paragraph (b) requires that electronic records must be capable of being reproduced on railroad printers.

Section 228.11 Hours of Duty Records

This section establishes the requirement to keep hours of service records and sets forth what information the records must contain. The requirements have been clarified by being broken into separate paragraphs for the different types of employees, each containing the recordkeeping requirements specific to that kind of employee that FRA believes are necessary to determining whether the employee is in compliance with the HSL for the duty tour being reported. This includes requiring data related to the new substantive requirements of the RSIA of 2008.

Paragraph (a) of this section establishes the general recordkeeping requirement, and provides that contractors and subcontractors whose employees perform covered service should also record the name of the railroad for which the employee performed covered service. This paragraph also provides that if an employee performs covered service

within the same duty tour that is subject to different statutory requirements, and therefore, different recordkeeping requirements in this section, such as, performing both the functions of a train employee and a dispatching service employee, the employee should complete a record appropriate to the type of service to which he or she was called, and reflect other covered service as an activity that is other service at the behest of the railroad. However, the total time on duty must be governed by the most restrictive statutory provision.

Paragraph (b) of this section establishes the recordkeeping requirements for train employees, including subparagraphs (13) through (16), which relate to information required as a result of the statutory amendments in the RSIA of 2008. Subparagraph (13) requires that the record must indicate the total amount of time by which the combination of the total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours. Subparagraph (14) requires the record to reflect the cumulative total for the calendar month of time spent on duty, awaiting or in deadhead transportation, and in any other service for the carrier (in other words the cumulative total toward the 276-hour monthly maximum). Subparagraph (15) requires the record to indicate the cumulative total for the calendar month of time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty. Subparagraph (16) requires the record to indicate the number of consecutive days in which a period of time on duty was initiated.

Paragraph (b) of this section resulted in significant discussion in the working group, which resulted in a number of changes to the rule text. As was discussed in section III, above, of the preamble, AAR did not agree during the RSAC process with FRA's requirement to report the first train and the last train to which the employee was assigned, and any train immediately preceding or immediately following a period of interim release, even after utility employees, employees performing yard jobs and employees on shuttle assignments were excluded, and FRA subsequently made further modifications to this paragraph.

Subparagraph (4) requires train employees to report the train ID for each assignment required to be reported. Utility employees, employees assigned to yard jobs, and employees assigned to shuttle assignments identified as such by a unique job or train symbol are excluded from the requirements of this subparagraph. FRA expects, however, that railroads will take care to avoid designating as a shuttle assignment jobs that do not truly function in the manner suggested by the language.

Subparagraph (5) requires train employees to report the location, date, and beginning time of the first assignment in a duty tour, and any assignment immediately following a period of interim release.

Subparagraph (6) requires train employees to report the location, date, and time relieved for the last assignment in a duty tour and any assignment preceding a period of interim release.

Subparagraph (7) requires train employees to report the location, date, and time released for the last assignment in a duty tour and any assignment preceding a period of interim release.

Subparagraph (8) requires train employees to report the beginning and ending location, date, and time for periods spent in transportation to the first assignment in a duty tour, from an assignment to a period of interim release, from a period of interim release to the next assignment in a duty tour, and from the last assignment in a duty tour to the point of final release.

Also, as was discussed in section III, above, of the preamble, the requirement in subparagraph (14) to track the cumulative total toward the limitation of 276 hours in a calendar month was opposed as being too burdensome, especially for those employees completing paper records. In response, FRA will allow Class III railroads to track the cumulative total throughout the month, note it on the records, and make it available to FRA, provided that the employee certify the monthly total after the end of each month.

Paragraph (c) provides that subparagraphs (13) through (16) of paragraph (b) do not apply to the records of train employees providing commuter or intercity passenger rail transportation, because these subparagraphs relate to the new substantive provisions of the HSL in the RSIA of 2008, and those provisions do not apply to train employees of commuter and intercity passenger railroads at this time. This distinction led to some discussion as to how to apply the recordkeeping requirements to train employees who work in both freight and passenger service. FRA believes this issue is best addressed by the individual recordkeeping systems of railroads that have employees who work in both types of service. The railroad should ensure that the employee has the appropriate record to complete for the type of service that he or she performed in any given duty tour.

Paragraphs (d) and (e) provide the recordkeeping requirements for dispatching service employees and signal employees respectively.

Section 228.13 Preemptive Effect

This section sets forth the preemptive effect of this part. The preemption provision of the former Federal Railroad Safety Act of 1970 (FRSA), as amended, 49 U.S.C. 20106, governs the preemptive effect of this regulation, and the preemption provision of the regulation conforms to the terms of the statute. State and local requirements, both statutory and common law, are preempted when such non-Federal requirements cover the same subject matter as the requirements of this part. A State may adopt, or continue in force a law, regulation, or order covering the same subject matter as a DOT regulation or order applicable to railroad safety and security only when the additional or more stringent state law, regulation, or order is necessary to eliminate or reduce an essentially local safety or security hazard; is not incompatible with a law, regulation, or order of the United States Government; and does not unreasonably burden interstate commerce.

Section 20106 also permits State tort actions arising from events or activities occurring on or after January 18, 2002 that allege a violation of the Federal standard of care established by regulation or order issued by the Secretary of Transportation (with respect to railroad safety) or the Secretary of Homeland Security (with respect to railroad security), a party's failure to comply with its own plan, rule, or standard that it created pursuant to a regulation or order issued by either of the two Secretaries, or a party's violation of a State standard that is necessary to eliminate or reduce an essentially local safety or security hazard, is not incompatible with a law, regulations, or order of the United States Government, and does not unreasonably burden interstate commerce.

Section 228.19 Monthly Reports of Excess Service

This section requires monthly reports of excess service, and indicates the instances of excess service that must be reported, in separate paragraphs for train employees, dispatching service employees, and signal employees, including requirements related to new substantive provisions of the HSL that were added by the RSIA of 2008. It also provides for excess service reports to be submitted electronically or appended to

and retained with the employee hours of service record to which the excess service being reported relates.

Paragraph (a) requires that the instances of excess service listed in this section be reported to FRA's Associate Administrator for Railroad Safety/Chief Safety Officer.

Paragraph (b) provides the instances of excess service which must be reported for train employees. Subparagraphs (1) through (3) correspond to requirements that were contained in this section as it existed prior to the enactment of the RSIA of 2008, with the exception that the new minimum statutory off-duty period of 10 hours is substituted. Subparagraphs (4) through (10) are instances of possible excess service related to new substantive limitations in the HSL. Paragraph (c) provides the instances of excess service that must be reported for train employees of commuter or intercity passenger railroads. Because these employees continue to be covered by the HSL as it existed prior to the enactment of the RSIA of 2008, the instances of excess service which must be reported for these employees are identical to those required by this section for train employees prior to this revision.

Paragraph (d) contains the instances of excess service which must be reported for dispatching service employees. Because there were no substantive changes to the HSL related to dispatching service employees other than the grant of authority to the Secretary to prescribe regulations more stringent than the statute, the instances of excess service that must be reported are identical to those required by this section for dispatching service employees by this section prior to this revision.

Paragraph (e) provides the instances of excess service that must be reported for signal employees, which were modified to reflect the new minimum statutory off-duty period.

Paragraph (f) provides the method for filing with FRA the instances of excess service required to be reported by this section, while paragraph (g) provides procedures for the use of an alternative method for filing instances of excess service using an electronic signature.

Paragraph (h) excepts any railroad, or contractor or subcontractor to a railroad that uses an electronic recordkeeping system that complies with this part from the requirement to file with FRA its monthly reports of excess service. The electronic recordkeeping system must require the employee to enter an explanation for any excess service that the employee certifies on his or her record, require the railroad, contractor, or subcontractor to make a determination as to whether each instance would be reportable, allow the railroad, contractor, or subcontractor to append its analysis to the electronic record, and allow FRA inspectors and participating State inspectors access to employee reports of excess service and any explanations provided.

Section 228.23 Criminal Penalty

This section is amended only to update the statutory citation to the penalty provision of the HSL to reflect the recodification of the Federal railroad safety laws, including the HSL, in 1994. Public Law 103–272, 108 Stat. 745.

Section 228.201 Electronic Recordkeeping; General

This section sets forth the basic requirements for the use of an electronic recordkeeping system to create and maintain the records required by this part. Any record required by this part may be created and stored electronically in such a system, and those records submitted to FRA may also be submitted electronically, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (Pub. L. 106–229, 114 Stat. 464, June 30, 2000).

The system must meet the requirements of this part, and the records created and stored in the system must contain the required information. The section further provides that a railroad, contractor, or subcontractor using an electronic recordkeeping system must sufficiently monitor the database to ensure a high degree of accuracy in the records, and train its employees on the proper use of the system. The information technology security program of the railroad, contractor, or subcontractor must also be adequate to prevent unauthorized access to the program logic or individual records. Finally, this section provides that FRA may prohibit or revoke the authority to use an electronic recordkeeping system if FRA finds that the system is not properly secured, is inaccessible to FRA, or fails to record and store the information adequately and accurately. If FRA makes such a determination, it will be issued in writing.

Section 228.203 Program Components

This section establishes the required components for electronic recordkeeping programs in the areas of system security, identification of the individual who entered specific data, capabilities of program logic, and system search capabilities.

Paragraph (a) provides the standards that the electronic recordkeeping system must meet in terms of system security. Subparagraph (a)(1) provides that data entry is restricted to the employee or train crew whose time is being reported. However, there are two exceptions to this requirement. The first is for pre-populated data, which was an area of significant discussion and eventual compromise in the working group, as discussed in section III above. The second exception applies to situations in which an employee has reached or exceeded his or her maximum allowed time on duty, and a quick tie-up is required. As was discussed in section IB, the idea behind a quick tie-up is that a few items of basic information are needed to determine the time at which the employee is beginning his or her statutory off-duty period, and when he or she will be rested to begin the next duty tour. However, the intention is for the employee to be able to complete this limited data entry very quickly in order to begin the statutory off-duty period and not extend a duty tour that is already at its maximum limit. Therefore, FRA has provided an additional exception to the requirement of employee-entered data, to allow an employee to provide quick tie-up information by telephone, by facsimile, or by other electronic means in situations where for any reason, a computer terminal is unavailable. FRA expects that in most situations, the employee will call a dispatcher, call desk, or trouble desk, to provide the quick tie-up information to those who need to know it to be able to call the employee for his or her next time on duty. However, situations may arise when it is difficult to reach someone by telephone, which could increase the time it will take to complete the process. The Working Group requested that FRA allow the use of other technology for electronic transmission of the information, and FRA revised the rule text accordingly. However, FRA cautions against the use of electronic means, such as e-mail, to enable an employee to tie up and officially begin a statutory off-duty period while in fact still performing service, awaiting transportation to final release, or otherwise still involved in the duty tour being tied up.

Subparagraph (a)(1) also provides that the system may not allow two individuals to have the same electronic identity, and that the system must be structured so that a record cannot be deleted or altered once it is certified, and that any amendment to a record must either be stored electronically

apart from the record it amends or electronically attached as information but without altering the record. Amendments must also identify the person making the amendment. Finally, the system must be capable of maintaining records as submitted without corruption or loss of data, and ensure that supervisors and crew management officials can access, but not delete or alter a record, once the employee has reported for duty, and once the employee has certified information that he or she entered on the record.

Paragraph (b) provides that the program must be capable of identifying each individual who entered data on a record, and which data items were entered by each individual if more than one person entered data on a given record.

Paragraph (c) provides the program logic features that an electronic recordkeeping system must contain in order to properly calculate total time on duty, to identify errors, to require reconciliation of differences in prior time off, which would indicate an activity or assignment not captured on a record, to require explanations when total time on duty exceeds the statutory maximum for the employee, and to require proper use of the quick tie-up. As was discussed in section III above, this section was the subject of discussion in the Working Group, and the rule text was modified to provide flexibility for future systems, and in particular for the recording and reporting of hours of service data by signal employees, who do not report in the same manner as train employees.

Paragraph (d) establishes the required search capabilities for an electronic recordkeeping system, establishing the specific data fields and other criteria by which the system must be capable of searching for and retrieving responsive records.

Section 228.205 Access to Electronic Records

Paragraph (a) of this section provides that access to electronic recordkeeping systems must be granted to FRA and State inspectors through the use of railroad computer terminals. Paragraph (b) requires the establishment of procedures for providing inspectors with an identification number and password to access the system.

Paragraph (c) provides that the inspection screen must be formatted so that each data field entered by an employee is visible, that the data fields must be searchable as described in § 228.203(d) and yield access to all records matching the specified search criteria, and that the records must be displayed in a manner that is crew-based and duty-tour-oriented, so that the records of all employees who worked together as part of a train crew or signal gang will be displayed together, and the record will include all of the assignments or activities required to be reported.

Section 228.207 Training

This section requires railroads and contractors and subcontractors to railroads to provide initial and refresher training to train employees, signal employees, and dispatching service employees, and the supervisors of these employees. Paragraph (b) provides that initial training must include classroom and hands-on components, and must cover the aspects of the HSL relevant to the employee's position, and proper entry of hours of service data. Testing is also required to ensure that the objectives of the training are met. This section requires that initial training be provided as soon as practicable. FRA would expect that some level of training, such as on the new statutory requirements, will be needed fairly quickly, to ensure proper recordkeeping. This may be done less formally, either in person with a supervisor, as ''on the job'' training, or through electronic media that may be provided to an employee. However, the more comprehensive initial training required by this section may be provided in combination with other training, such as that required by section 402 of the RSIA of 2008, and may be completed within the regular training cycle for the employee.

Paragraph (c) provides significant flexibility regarding refresher training. The paragraph does, however, require that the refresher training emphasize any relevant changes to the HSL or the recordkeeping system, as well as any areas in which supervisors or other railroad managers are noticing recurrent errors. No specific interval for refresher training is required, just that it must be provided when suggested by recurrent errors. FRA had initially proposed requiring refresher training every two years, but members of the Working Group objected, arguing that employees who complete records every day will not need training at a regular interval on how to do so, and that refresher training should be provided to those who are having difficulty. FRA revised the text of this section accordingly.

V. Regulatory Impact and Notices

A. Statutory Authority

Section 20103(a) of title 49 U.S. Code authorizes the Secretary to issue regulations governing all areas of railroad transportation safety, supplementing laws and regulations in effect on October 16, 1970. In addition, Section 108(f)(1) of the RSIA of 2008 requires the Secretary to prescribe a regulation revising the requirements for recordkeeping and reporting for hours of service of railroad employees contained in 49 CFR part 228 to adjust recordkeeping and reporting requirements to support compliance with 49 CFR ch. 211, as amended by the RSIA of 2008; to authorize electronic recordkeeping, and reporting of excess service, consistent with appropriate considerations for user interface; and to require training of affected employees and supervisors, including training of employees in the entry of hours of service data.

Section 108(f)(2) provides that in lieu of issuing a notice of proposed rulemaking as contemplated by 5 U.S.C. 553, the Secretary may use the RSAC to assist in development of the regulation.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing policies and procedures, and determined not to be economically significant under both Executive Order 12866 and DOT policies and procedures. *See* 44 FR 11034 (Feb. 26, 1979). This rule is a non-significant regulatory action under § 3(f) of Executive Order 12866 and the regulatory policies and procedures order issued by the DOT. Id. We have prepared and placed in the docket a regulatory impact analysis (RIA) addressing the economic impact of this rule.

This section summarizes the estimated economic impacts of the rule. The final rule is mandated by the RSIA of 2008, in order to revise the recordkeeping and reporting regulations in accordance with the substantive changes to employee work and rest periods that are specified in the RSIA of 2008. The impacts described are the impacts of the rule, distinct from the impacts of the RSIA of 2008.

The RIA contains a description of the costs of the rule. All railroads that operate on the general system of transportation are subject to the final rule. Train employees of commuter and intercity passenger railroads, however, are exempt from the new, specific limitations on employee work and rest periods in the RSIA of 2008. The RSIA

adds employees of contractors and subcontractors that perform signal work for railroads to those covered by the rule. The costs of the rule result from making required changes to existing recordkeeping systems to comply with the final rule. FRA establishes the standards for electronic recordkeeping systems for those railroads that wish to implement an electronic hours of service system. Four Class I railroads already use an electronic recordkeeping system by FRA waiver. The rule's specifications for electronic recordkeeping were based on FRA's experience with these waiver-approved systems to minimize the burden of the electronic recordkeeping option. The RSIA of 2008 also mandates that training be provided to employees on the hours of service law and recordkeeping system. FRA notes that training would be necessary even in the absence of FRA's rule, but accounts for training on the recordkeeping system to illustrate the type and extent of training a railroad, or a contractor or subcontractor to a railroad, would be expected to provide. Given the large number of employees subject to the rule, training costs are the biggest component of costs. For a 20 year period of analysis, the present value of costs attributable to the rule total about $11.2 million, using a discount rate of 7%, and $14 million using a discount rate of 3%. Of those costs, $9.2 million and $11.6 million are training costs respectively.

Members of the RSAC that helped develop the rule and the RIA stated that the primary benefit of the rule was a mechanism by which to comply with the hours of service law. The public welfare benefit of the rule is a method for effectively enforcing the substantive, new provisions in the RSIA of 2008. The benefit of training and recordkeeping is the ability of covered employees to comply with the requirements of the RSIA and thereby achieve the safety benefits intended by Congress. To the extent that railroads that are not currently using electronic recordkeeping take advantage of the option to use electronic recordkeeping, they may benefit from some efficiency gains. RSAC industry representatives indicated that there may be up to a 50% decrease in the time needed to complete an hours of service record, depending on the amount of information needed to be recorded. If the scale of time savings using an electronic system was a few minutes per individual entry, the savings could be significant when multiplied across the large number of employees covered by the RSIA of 2008 that perform daily or frequent recordkeeping. In addition, there may be indirect benefits of the rule, such as reduced storage needs for paper hours of service records.

C. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (''Federalism''). This rule amends FRA's regulations regarding the reporting and recordkeeping requirements for railroad employees and employees of contractors and subcontractors of a railroad who are performing service covered by the HSL. State and local requirements on the same subject matter covered by FRA's regulation and the amendments proposed in this rule, including the standards of care applicable in certain State common law tort actions, are preempted by 49 U.S.C. 20106. The preemption provision in the regulation directly reflects the terms of the statute. At the same time, this final rule does not propose any regulation that would have direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Additionally, it would not impose any direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply. However, State and local officials were involved in developing this rule. The RSAC, which was used to assist in the development of this rule, has as permanent members, the AASHTO and the ASRSM.

D. Executive Order 13175

We analyzed this final rule in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this rule does not significantly or uniquely affect tribes and does not impose substantial and direct compliance costs on Indian tribal governments, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

E. Regulatory Flexibility Act and Executive Order 13272

To ensure potential impacts of rules on small entities are properly considered, we developed this final rule in accordance with Executive Order 13272 (''Proper Consideration of Small Entities in Agency Rulemaking'') and DOT's procedures and policies to promote compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), and have determined that the RFA does not apply to this rulemaking.

As was discussed above, this rulemaking is required by the section 108(f) of the RSIA of 2008, which provides that in lieu of issuing a notice of proposed rulemaking as contemplated by 5 U.S.C. 553, the Secretary may utilize the RSAC to assist in development of the regulation, and FRA chose to utilize the RSAC to assist in developing the regulation.

The Small Business Administration's *A Guide for Government Agencies: How To Comply With the Regulatory Flexibility Act* (2003), provides that:

> [i]f, under the APA or any rule of general applicability governing federal grants to state and local governments, the agency is required to publish a general notice of proposed rulemaking (NPRM), the RFA must be considered (citing 5 U.S.C. 604(a)). * * * If an NPRM is not required, the RFA does not apply.''

Because an NPRM was not required in this instance, the RFA does not apply.

F. Paperwork Reduction Act

The information collection requirements in this final rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* The sections that contain the new and current information collection requirements and the estimated time to fulfill each requirement are as follows:

49 CFR section or statutory provision	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.11—Hours of Duty Records (New Requirement now includes signal contractors and their employees).	720 railroads/signal contractors.	29,893,000 records	2 min./5 min./10 min. ...	3,049,210
228.17—Dispatchers Record of Train Movements.	150 Dispatch Offices	200,750 records	3 hours	602,250

49 CFR section or statutory provision	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
228.19—Monthly Reports of Excess Service (New Report Requirement includes Limbo time and consecutive days on duty).	300 railroads	2,640 reports	2 hours	5,280
228.103—Construction of Employee Sleeping Quarters—Petitions to allow construction near work areas.	50 railroads	1 petition	16 hours	16
228.203—Program Components (New Requirement)—Electronic Recordkeeping—				
—Modifications for Daylight Savings Time	9 railroads	5 modifications	120 hours	600
—System Security/Individual User Identification/Program Logic Capabilities/Search Capabilities		1 program with security/I.D./program logic & search capability.	720 hours	720
228.205—Access to Electronic Records—(New Requirement)—System Access Procedures for Inspectors.	632 railroads	100 electronic records access procedures.	30 minutes	50
228.207—Training in Use of Electronic System—(New Requirements)—Initial Training.	720 railroads/signal contractors.	47,000 train employees	1 hour	47,000
—Refresher Training	720 railroads/signal contractors.	2,200 train employees	1 hour	2,200
49 U.S.C. 21102(b)—The Federal hours of service laws:				
—Petitions for Exemption from Laws	10 railroads	2 petitions	10 hours	20

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, at 202–493–6292, or Ms. Nakia Poston, Information Clearance Officer, at 202–493–6073.

OMB is required to make a decision concerning the collection of information requirements contained in this final rule between 30 and 60 days after publication of this document 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.

FRA is not authorized to impose a penalty on persons for violating information collection requirements that do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

G. Regulation Identifier Number (RIN)

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that:

> ''Before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of 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 $141,100,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement''

detailing the effect on State, local, and tribal governments and the private sector.

This rule will not result in the expenditure of more than $141,100,000 (adjusted annually for inflation) by the public sector in any one year, and thus preparation of such a statement is not required.

I. Environmental Assessment

The National Environmental Policy Act, 42 U.S.C. 4321–4375, requires that Federal agencies analyze proposed actions to determine whether the action will have a significant impact on the human environment. This rule will not have a significant impact on the human environment.

List of Subjects in 49 CFR Part 228

Administrative Practice and Procedures, Buildings and facilities, Hazardous materials transportation, Noise control, Penalties, Railroad employees, Railroad safety, Reporting and recordkeeping requirements.

PART 228—[AMENDED]

The Rule

■ For the reasons discussed in the preamble, part 228 of chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

■ 1. The authority citation for part 228 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 21101–21109; Sec. 108, Div. A, Public Law 110–432, 122 Stat. 48*60–4866*; 49 U.S.C. 21301, 21303, 21304, 21311; 28 U.S.C. 2461, note; 49 CFR 1.49; and 49 U.S.C. 103.

■ 2. Section 228.1 is amended by revising paragraph (a) to read as follows:

§ 228.1 Scope.

* * * * *

(a) Prescribes reporting and recordkeeping requirements with respect to the hours of service of certain railroad employees and certain employees of railroad contractors and subcontractors; and

■ 3. Section 228.3 is revised to read as follows:

§ 228.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all railroads and contractors and subcontractors of railroads.

(b) This part does not apply to:

(1) A railroad or a contractor or subcontractor of a railroad that operates only on track inside an installation which is not part of the general railroad system of transportation; or

(2) Rapid transit operations in an urban area that are not connected with the general railroad system of transportation.

■ 4. Section 228.5 is revised to read as follows:

§ 228.5 Definitions.

As used in this part—

Actual time means either the specific time of day, to the hour and minute, or the precise amount of time spent in an activity, in hours and minutes, that must be included in the hours of duty record, including, where appropriate, reference to the applicable time zone and either standard time or daylight savings time.

Administrator means the Administrator of the Federal Railroad Administration or any person to whom the Administrator has delegated authority in the matter concerned.

Administrative duties means any activities required by the railroad as a condition of employment, related to reporting, recording, or providing an oral or written statement related to a current, previous, or future duty tour. Such activities are considered service for the railroad, and time spent in these activities must be included in the *total time on duty* for any *duty tour* with which it may commingle.

At the behest of the employee refers to time spent by an employee in a railroad-related activity that is not required by the railroad as a condition of employment, in which the employee voluntarily participates.

At the behest of the railroad refers to time spent by an employee in a railroad-required activity that compels an employee to perform service for the railroad as a condition of employment.

Broken (aggregate) service means one or more periods of time on duty within a single *duty tour* separated by one or more qualifying interim releases.

Call and release occurs when an employing railroad issues an employee a *report-for-duty time,* and then releases the employee from the requirement to report prior to the *report-for-duty time*.

Carrier, *common carrier*, and *common carrier engaged in interstate or foreign commerce by railroad* mean *railroad*.

Commingled service means—

(1) For a train employee or a signal employee, any non-covered service at the behest of the railroad and performed for the railroad that is not separated from *covered service* by a qualifying statutory off-duty period of 8 or 10 hours or more. Such commingled service is counted as time on duty pursuant to 49 U.S.C. 21103(b)(3) (for train employees) or 49 U.S.C. 21104(b)(2) (for signal employees).

(2) For a dispatching service employee, any non-covered service mandated by the railroad and performed for the railroad within any 24-hour period containing *covered service*. Such commingled service is counted as time on duty pursuant to 49 U.S.C. 21105(c).

Commuting means—

(1) For a train employee, the time spent in travel—

(i) Between the employee's residence and the employee's *regular reporting point*, and

(ii) In railroad-provided or authorized transportation to and from the lodging facility at the away-from-home terminal (excluding travel for purposes of an interim release), where such time (including travel delays and room availability) does not exceed 30 minutes.

(2) For a signal employee, the time spent in travel between the employee's residence and the employee's *headquarters*.

(3) For a dispatching service employee, the time spent in travel between the employee's residence and any reporting point.

Consecutive service is a period of unbroken *total time on duty* during a *duty tour*.

Covered service means—

(1) For a train employee, the portion of the employee's time on duty during which the employee is engaged in, or connected with, the movement of a train.

(2) For a dispatching service employee, the portion of the employee's time on duty during which the employee, by the use of an electrical or mechanical device, dispatches, reports, transmits, receives, or delivers an order related to or affecting the movement of a train.

(3) For a signal employee, the portion of the employee's time on duty during which the employee is engaged in installing, repairing, or maintaining a signal system.

Covered service assignment means—

(1) For a train employee, each unique assignment of the employee during a period of *covered service* that is associated with either a specific train or a specific yard job.

(2) For a signal employee, the assigned duty hours of the employee, including overtime, or unique trouble call assignments occurring outside the employee's assigned duty hours.

(3) For a dispatching service employee, each unique assignment for the employee that occurs within any 24-hour period in which the employee, by the use of an electrical or mechanical device, dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

Deadheading means the physical relocation of a train employee from one point to another as a result of a railroad-issued verbal or written directive.

Designated terminal means the home or away-from-home terminal for the assignment of a particular train crew.

Dispatching service employee means an operator, train dispatcher, or other train employee who by the use of an electrical or mechanical device dispatches, reports, transmits, receives, or delivers orders related to or affecting train movements.

Duty location for a signal employee is the employee's *headquarters* or the precise location where the employee is expected to begin performing service for the railroad as defined in 49 U.S.C. 21104(b)(1) and (2).

Duty tour means—

(1) The total of all periods of *covered service* and *commingled service* for a train employee or a signal employee occurring between two *statutory off-duty periods* (i.e., off-duty periods of a minimum of 8 or 10 hours); or

(2) The total of all periods of *covered service* and *commingled service* for a dispatching service employee occurring in any 24-hour period.

Employee means an individual employed by a railroad or a contractor or subcontractor to a railroad who—

(1) Is actually engaged in or connected with the movement of any train, including a person who performs the duties of a hostler;

(2) Dispatches, reports, transmits, receives, or delivers an order pertaining to a train movement by the use of telegraph, telephone, radio, or any other electrical or mechanical device; or

(3) Is engaged in installing, repairing, or maintaining a signal system.

Final release is the time that a train employee or a signal employee is released from all activities at the behest of the railroad and begins his or her *statutory off-duty period*.

Headquarters means the regular assigned on-duty location for signal employees, or the lodging facility or crew quarters where traveling signal gangs reside when working at various system locations.

Interim release means an off-duty period applied to train employees only, of at least 4 hours but less than the required *statutory off-duty period* at a *designated terminal,* which off-duty period temporarily suspends the

accumulation of time on duty, but does not start a new *duty tour.*

Limbo time means a period of time treated as neither time on duty nor time off duty in 49 U.S.C. 21103 and 21104, and any other period of service for the railroad that does not qualify as either covered service or commingled service.

On-duty time means the actual time that an employee reports for duty to begin a *covered service assignment.*

Other-than-regular reporting point means any location where a train employee reports to begin or restart a *duty tour,* that is not the employee's *regular reporting point.*

Prior time off means the *amount of time* that an employee has been off duty between identifiable periods of service *at the behest of the railroad.*

Program edits are filters contained in the logic of an hours of service recordkeeping program that detect identifiable reporting errors made by a reporting employee at the time of data entry, and prevent the employee from submitting a record without first correcting or explaining any identified errors or anomalies.

Quick tie-up is a data entry process used only when an employee is within 3 minutes of, or is beyond, his or her statutory maximum on-duty period, which process allows an employee to enter only the basic information necessary for the railroad to identify the beginning of an employee's *statutory off-duty period,* to avoid the excess service that would otherwise be incurred in completing the full record for the *duty tour.* The information permitted in a quick tie-up process is limited to, at a maximum:

(1) Board placement time;

(2) Relieved location, date, and time;

(3) Final release location, date, and time;

(4) Contact information for the employee during the statutory off-duty period;

(5) Request for rest in addition to the statutory minimum, if provided by collective bargaining agreement or local practice;

(6) The employee may be provided an option to enter basic payroll information, related only to the duty tour being tied up; and

(7) Employee certification of the tie-up information provided.

Railroad means a person providing *railroad transportation.*

Railroad transportation means any form of non-highway ground transportation that runs on rails or electromagnetic guideways, including commuter or other short-haul rail passenger service in a metropolitan or suburban area, and high speed ground transportation systems that connect metropolitan areas, without regard to whether they use new technologies not associated with traditional railroads. Such term does not include rapid transit operations within an urban area that are not connected to the general railroad system of transportation.

Regular reporting point means the permanent on-duty location of a train employee's regular assignment that is established through a job bulletin assignment (either a job award or a forced assignment) or through an employee's exercise of seniority to be placed in an assignment. The assigned regular reporting point is a single fixed location identified by the railroad, even for extra board and pool crew employees.

Release means—

(1) For a train employee,

(i) The time within the *duty tour* that the employee begins an *interim release;*

(ii) The time that an employee completes a *covered service assignment* and begins another *covered service assignment* on a different train or job, or

(iii) The time that an employee completes a *covered service assignment* to begin another activity that counts as time on duty (including waiting for deadhead transportation to another duty location at which the employee will perform *covered service,* deadheading to duty, or any other *commingled service).*

(2) For a signal employee, the time within a *duty tour* that the employee—

(i) Completes his or her regular assigned hours and begins an off-duty period of at least one hour but less than a *statutory off-duty period;* or

(ii) Completes his or her return travel from a trouble call or other unscheduled duty and begins an off-duty period of at least one hour, but less than a *statutory off-duty period.*

(3) For a dispatching service employee, when he or she stops performing *covered service* and *commingled service* within any 24-hour period and begins an *off-duty period* of at least one hour.

Relieved time means—

(1) The actual time that a train employee stops performing a *covered service assignment* or *commingled service.*

(2) The actual time that a signal employee:

(i) Completes his or her assigned duty hours, or stops performing *covered service* or *commingled service,* whichever is later; or

(ii) Stops performing *covered service* associated with a trouble call or other unscheduled duty outside of normally assigned duty hours.

Reports for duty means that an employee—

(i) Presents himself or herself at the location established by the railroad at the time the railroad established for the employee to be present; and

(ii) Is ready to perform *covered service.*

Report-for-duty time means—

(1) For a train employee, the actual time that the employee is required to be present at a *reporting point* and prepared to start a *covered service assignment.*

(2) For a signal employee, the assigned starting time of an employee's scheduled shift, or the time that he or she receives a trouble call or a call for any other unscheduled duty during an off-duty period.

(3) For a dispatching service employee, when the employee begins the turn-over process at or before the beginning of his or her assigned shift, or begins any other activity at the behest of the railroad during any 24-hour period in which covered service is performed.

Reporting point means any location where an employee is required to begin *or restart a* duty tour.

Seniority move means a repositioning *at the behest of the employee,* usually a repositioning from a regular assignment or extra board to a different regularly assigned position or extra board, as the result of the employee's selection of a bulletin assignment or the employee's exercise of seniority over a junior employee.

Signal employee means an individual who is engaged in installing, repairing, or maintaining signal systems.

Station, office or tower means the precise location where a dispatching service employee is expected to perform service for the railroad as defined in 49 U.S.C. 21105(b) and (c).

Statutory off-duty period means the period of 8 or 10 consecutive hours or more time, that is the minimum off-duty period required under the hours of service laws for a train employee or a signal employee to begin a new 24-hour period for the purposes of calculating his or her *total time on duty.*

Total off-duty period means the actual amount of time that a train employee or a signal employee is off duty between duty tours after the previous final release and before the beginning of the next duty tour. This time may differ from the expected prior time off that will be generated by the recordkeeping system, if the employee performed service at the behest of the railroad between the duty tours.

Total time on duty (TTOD) means the total accumulation of time spent in periods of *covered service* and *commingled service* between qualifying *statutory off-duty periods* of 8 or 10

hours or more. Mandatory activities that do not constitute *covered service,* such as rules classes, when they may not attach to *covered service,* are counted as *limbo time,* rather than *commingled service,* which limbo time is not counted toward the calculation of *total time on duty.*

Train employee means an individual engaged in or connected with the movement of a train, including a hostler.

Travel time means—

(1) For a signal employee, the time spent in transportation between the employee's *headquarters* and an outlying duty point or between the employee's residence and an outlying duty point, or, between duty locations, including both on-track and on-highway vehicular travel.

(2) For a dispatching service employee, the time spent in travel between *stations, offices, or towers* during the employee's time on duty.

■ 5. Section 228.9 is amended by revising the section heading and paragraph (a) and adding paragraph (b), to read as follows:

§ 228.9 Records; general.

(a) Each manual record maintained under this part shall be—

(1) Signed by the employee whose time on duty is being recorded or, in the case of a train and engine crew or a signal employee gang, signed by the ranking crewmember;

(2) Retained for two years at locations identified by the carrier; and

(3) Available upon request at the identified location for inspection and copying by the Administrator during regular business hours.

(b) Each electronic record maintained under this part shall be—

(1) Certified by the employee whose time on duty is being recorded or, in the case of a train and engine crew or a signal employee gang, certified by the reporting employee who is a member of the train crew or signal gang whose time is being recorded;

(2) Electronically stamped with the certifying employee's name and the date and time of certification;

(3) Retained for 2 years in a secured file that prevents alteration after certification;

(4) Accessible by the Administrator through a computer terminal of the railroad, using a railroad-provided identification code and a unique password.

(5) Reproducible using the printing capability at the location where records are accessed.

■ 6. Section 228.11 is amended by revising paragraph (a) and adding paragraphs (b), (c), and (d) to read as follows:

§ 228.11 Hours of duty records.

(a) *In general.* Each railroad, or a contractor or a subcontractor of a railroad, shall keep a record, either manually or electronically, concerning the hours of duty of each employee. Each contractor or subcontractor of a railroad shall also record the name of the railroad for whom its employee performed covered service during the duty tour covered by the record. Employees who perform covered service assignments in a single duty tour that are subject to the recordkeeping requirements of more than one paragraph of this section, must complete the record applicable to the covered service position for which they were called, and record other covered service as an activity constituting other service at the behest of the railroad.

(b) *For train employees.* Except as provided by paragraph (c) of this section, each hours of duty record for a train employee shall include the following information about the employee:

(1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname).

(2) Each covered service position in a duty tour.

(3) Amount of time off duty before beginning a new covered service assignment or resuming a duty tour.

(4) Train ID for each assignment required to be reported by this part, except for the following employees, who may instead report the unique job or train ID identifying their assignment:

(i) Utility employees assigned to perform covered service, who are identified as such by a unique job or train ID;

(ii) Employees assigned to yard jobs, except that employees assigned to perform yard jobs on all or parts of consecutive shifts must at least report the yard assignment for each shift;

(iii) Assignments, either regular or extra, that are specifically established to shuttle trains into and out of a terminal during a single duty tour that are identified by a unique job or train symbol as such an assignment.

(5) Location, date, and beginning time of the first assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and beginning time of the assignment immediately following the interim release.

(6) Location, date, and time relieved for the last assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and time relieved for the assignment immediately preceding the interim release.

(7) Location, date, and time released from the last assignment in a duty tour, and, if the duty tour exceeds 12 hours and includes a qualifying period of interim release as provided by 49 U.S.C. 21103(b), the location, date, and time released from the assignment immediately preceding the interim release.

(8) Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, if any, to the first assignment in a duty tour, from an assignment to the location of a period of interim release, from a period of interim release to the next assignment, or from the last assignment in a duty tour to the point of final release, including the mode of transportation (train, track car, railroad-provided motor vehicle, personal automobile, etc.).

(9) Beginning and ending location, date, and time of any other service performed at the behest of the railroad.

(10) Identification (code) of service type for any other service performed at the behest of the railroad.

(11) Total time on duty for the duty tour.

(12) Reason for any service that exceeds 12 hours total time on duty for the duty tour.

(13) The total amount of time by which the sum of total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours.

(14) The cumulative total for the calendar month of—

(i) Time spent in covered service;

(ii) Time spent awaiting or in deadhead transportation from a duty assignment to the place of final release; and

(iii) Time spent in any other service at the behest of the railroad.

(15) The cumulative total for the calendar month of time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty.

(16) Number of consecutive days in which a period of time on duty was initiated.

(c) *Exceptions to requirements for train employees.* Paragraphs (b)(13) through (b)(16) of this section do not apply to the hours of duty records of train employees providing commuter

rail passenger transportation or intercity rail passenger transportation.

(d) *For dispatching service employees.* Each hours of duty record for a dispatching service employee shall include the following information about the employee:

(1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname).

(2) Each covered service position in a duty tour.

(3) Amount of time off duty before going on duty or returning to duty in a duty tour.

(4) Location, date, and beginning time of each assignment in a duty tour.

(5) Location, date, and time released from each assignment in a duty tour.

(6) Beginning and ending location, date, and time of any other service performed at the behest of the railroad.

(7) Total time on duty for the duty tour.

(e) *For signal employees.* Each hours of duty record for a signal employee shall include the following information about the employee:

(1) Identification of the employee (initials and last name; or if last name is not the employee's surname, provide the employee's initials and surname).

(2) Each covered service position in a duty tour.

(3) Headquarters location for the employee.

(4) Amount of time off duty before going on duty or resuming a duty tour.

(5) Location, date, and beginning time of each covered service assignment in a duty tour.

(6) Location, date, and time relieved for each covered service assignment in a duty tour.

(7) Location, date, and time released from each covered service assignment in a duty tour.

(8) Beginning and ending location, date, and time for periods spent in transportation, other than personal commuting, to or from a duty assignment, and mode of transportation (train, track car, railroad-provided motor vehicle, personal automobile, etc.).

(9) Beginning and ending location, date, and time of any other service performed at the behest of the railroad.

(10) Total time on duty for the duty tour.

(11) Reason for any service that exceeds 12 hours total time on duty for the duty tour.

■ 7. Add § 228.13 to read as follows:

§ 228.13 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except for a provision necessary to eliminate or reduce an essentially local safety hazard if that provision is not incompatible with a law, regulation, or order of the United States government and does not unreasonably burden interstate commerce. Nothing in this paragraph shall be construed to preempt an action under State law seeking damages for personal injury, death, or property damage alleging that a party has failed to comply with the Federal standard of care established by this part, has failed to comply with its own plan, rule, or standard that it created pursuant to this part, or has failed to comply with a State law, regulation, or order that is not incompatible with the first sentence of this paragraph.

■ 8. Section 228.19 is revised to read as follows:

§ 228.19 Monthly reports of excess service.

(a) *In general.* Except as provided in paragraph (h) of this section, each railroad, or a contractor or a subcontractor of a railroad, shall report to the Associate Administrator for Railroad Safety/Chief Safety Officer, Federal Railroad Administration, Washington, DC 20590, each instance of excess service listed in paragraphs (b) through (e) of this section, in the manner provided by paragraph (f) of this section, within 30 days after the calendar month in which the instance occurs.

(b) *For train employees.* Except as provided in paragraph (c) of this section, the following instances of excess service by train employees must be reported to FRA as required by this section:

(1) A train employee is on duty for more than 12 consecutive hours.

(2) A train employee continues on duty without at least 10 consecutive hours off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than 10 consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.[1]

(3) A train employee returns to duty without at least 10 consecutive hours off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than 10 consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.[1]

(4) A train employee returns to duty without additional time off duty, equal to the total amount of time by which the employee's sum of total time on duty and time spent awaiting or in deadhead transportation to the point of final release exceeds 12 hours.

(5) A train employee exceeds a cumulative total of 276 hours in the following activities in a calendar month:

(i) Time spent in covered service;

(ii) Time spent awaiting or in deadhead transportation from a duty assignment to the place of final release; and

(iii) Time spent in any other service at the behest of the railroad.

(6) A train employee initiates an on-duty period on more than 6 consecutive days, when the on-duty period on the sixth consecutive day ended at the employee's home terminal, and the seventh consecutive day is not allowed pursuant to a collective bargaining agreement or pilot project.

(7) A train employee returns to duty after initiating an on-duty period on 6 consecutive days, without 48 consecutive hours off duty at the employee's home terminal.

(8) A train employee initiates an on-duty period on more than 7 consecutive days.

(9) A train employee returns to duty after initiating an on-duty period on 7 consecutive days, without 72 consecutive hours off duty at the employee's home terminal.

(10) A train employee exceeds the following limitations on time spent awaiting or in deadhead transportation from a duty assignment to the place of final release following a period of 12 consecutive hours on duty:

(i) 40 hours in any calendar month completed prior to October 1, 2009;

(ii) 20 hours in the transition period from October 1, 2009–October 15, 2009;

(iii) 15 hours in the transition period from October 16, 2009–October 31, 2009; and

(iv) 30 hours in any calendar month completed after October 31, 2009.

(c) *Exception to requirements for train employees.* For train employees who provide commuter rail passenger transportation or intercity rail passenger transportation during a duty tour, the following instances of excess service must be reported to FRA as required by this section:

(1) A train employee is on duty for more than 12 consecutive hours.

(2) A train employee returns to duty after 12 consecutive hours of service without at least 10 consecutive hours off duty.

[1] Instances involving duty tours that are broken by four or more consecutive hours of off duty time at a designated terminal which duty tours do not constitute more than a total of 12 hours time on duty are not required to be reported, provided such duty tours are immediately preceded by 10 or more consecutive hours of off-duty time.

(3) A train employee continues on duty without at least 8 consecutive hours off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than 8 consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.[2]

(4) A train employee returns to duty without at least 8 consecutive hours off duty during the preceding 24 hours. Instances involving duty tours that are broken by less than 8 consecutive hours off duty which duty tours constitute more than a total of 12 hours time on duty must be reported.[2]

(d) *For dispatching service employees.* The following instances of excess service by dispatching service employees must be reported to FRA as required by this section:

(1) A dispatching service employee is on duty for more than 9 hours in any 24-hour period at an office where two or more shifts are employed.

(2) A dispatching service employee is on duty for more than 12 hours in any 24-hour period at any office where one shift is employed.

(e) *For signal employees.* The following instances of excess service by signal employees must be reported to FRA as required by this section:

(1) A signal employee is on duty for more than 12 consecutive hours.

(2) A signal employee continues on duty without at least 10 consecutive hours off duty during the preceding 24 hours.

(3) A signal employee returns to duty without at least 10 consecutive hours off duty during the preceding 24 hours.

(f) Except as provided in paragraph (h) of this section, reports required by paragraphs (b) through (e) of this section shall be filed in writing on FRA Form F–6180–3 [3] with the Office of Railroad Safety, Federal Railroad Administration, Washington, DC 20590. A separate form shall be used for each instance reported.

(g) *Use of electronic signature.* For the purpose of complying with paragraph (f) of this section, the signature required on Form FRA F–6180–3 may be provided to FRA by means of an electronic signature provided that:

(1) The record contains the printed name of the signer and the date and actual time that the signature was executed, and the meaning (such as authorship, review, or approval), associated with the signature;

(2) Each electronic signature shall be unique to one individual and shall not be used by, or assigned to, anyone else;

(3) Before a railroad, or a contractor or subcontractor to a railroad, establishes, assigns, certifies, or otherwise sanctions an individual's electronic signature, or any element of such electronic signature, the organization shall verify the identity of the individual;

(4) Persons using electronic signatures shall, prior to or at the time of such use, certify to the agency that the electronic signatures in their system, used on or after the effective date of this regulation, are the legally binding equivalent of traditional handwritten signatures;

(5) The certification shall be submitted, in paper form and signed with a traditional handwritten signature, to the Associate Administrator for Railroad Safety/Chief Safety Officer; and

(6) Persons using electronic signatures shall, upon agency request, provide additional certification or testimony that a specific electronic signature is the legally binding equivalent of the signer's handwritten signature.

(h) *Exception.* A railroad, or a contractor or subcontractor to a railroad, is excused from the requirements of paragraphs (a) and (f) of this section as to any employees for which—

(1) The railroad, or a contractor or subcontractor to a railroad, maintains hours of service records using an electronic recordkeeping system that complies with the requirements of subpart D of this part; and

(2) The electronic recordkeeping system referred to in paragraph (h)(1) of this section requires—

(i) The employee to enter an explanation for any excess service certified by the employee; and

(ii) The railroad, or a contractor or subcontractor of a railroad, to analyze each instance of excess service certified by one of its employees, make a determination as to whether each instance of excess service would be reportable under the provisions of paragraphs (b) through (e) of this section, and allows the railroad, or a contractor or subcontractor to a railroad, to append its analysis to its employee's electronic record; and

(iii) Allows FRA inspectors and State inspectors participating under 49 CFR Part 212 access to employee reports of excess service and any explanations provided.

■ 9. Section 228.23 is revised to read as follows:

§ 228.23 Criminal penalty.

Any person who knowingly and willfully falsifies a report or record required to be kept under this part or otherwise knowingly and willfully violates any requirement of this part may be liable for criminal penalties of a fine up to $5,000, imprisonment for up to two years, or both, in accordance with 49 U.S.C. 21311(a).

■ 10. Add subpart D to read as follows:

Subpart D—Electronic Recordkeeping

Sec.
228.201 Electronic recordkeeping; general.
228.203 Program components.
228.205 Access to electronic records.
228.207 Training.

Subpart D—Electronic Recordkeeping

§ 228.201 Electronic recordkeeping; general.

For purposes of compliance with the recordkeeping requirements of subpart B, a railroad, or a contractor or a subcontractor to a railroad may create and maintain any of the records required by subpart B through electronic transmission, storage, and retrieval provided that all of the following conditions are met:

(1) The system used to generate the electronic record meets all requirements of this subpart;

(2) The electronically generated record contains the information required by § 228.11;

(3) The railroad, or contractor or subcontractor to the railroad, monitors its electronic database of employee hours of duty records through sufficient number of monitoring indicators to ensure a high degree of accuracy of these records; and

(4) The railroad, or contractor or subcontractor to the railroad, trains its employees on the proper use of the electronic recordkeeping system to enter the information necessary to create their hours of service record, as required by § 228.207.

(5) The railroad, or contractor or subcontractor to the railroad, maintains an information technology security program adequate to ensure the integrity of the system, including the prevention of unauthorized access to the program logic or individual records.

(6) FRA's Associate Administrator for Railroad Safety/Chief Safety Officer may prohibit or revoke the authority to use an electronic system if FRA finds the system is not properly secure, is inaccessible to FRA, or fails to record and store the information adequately and accurately. FRA will record such a determination in writing, including the basis for such action, and will provide a copy of its determination to the

[2] Instances involving duty tours that are broken by four or more consecutive hours of off-duty time at a designated terminal which duty tours do not constitute more than a total of 12 hours time on duty are not required to be reported, provided such duty tours are immediately preceded by 8 or more consecutive hours of off-duty time.

[3] Form may be obtained from the Office of Railroad Safety, Federal Railroad Administration, Washington, DC 20590. Reproduction is authorized.

affected railroad, or contractor or subcontractor to a railroad.

§ 228.203 Program components.

(a) *System security.* The integrity of the program and database must be protected by a security system that utilizes an employee identification number and password, or a comparable method, to establish appropriate levels of program access meeting all of the following standards:

(1) Data input is restricted to the employee or train crew or signal gang whose time is being recorded, with the following exceptions:

(i) A railroad, or a contractor or subcontractor to a railroad, may allow its recordkeeping system to pre-populate fields of the hours of service record provided that—

(A) The recordkeeping system pre-populates fields of the hours of service record with information known to the railroad, or contractor or subcontractor to the railroad, to be factually accurate for a specific employee.

(B) The recordkeeping system may also provide the ability for employees to copy data from one field of a record into another field, where applicable.

(C) Estimated, historical, or arbitrary data are not used to pre-populate any field of an hours of service record.

(D) A railroad, or a contractor or a subcontractor to a railroad, is not in violation of this paragraph if it makes a good faith judgment as to the factual accuracy of the data for a specific employee but nevertheless errs in pre-populating a data field.

(E) The employee may make any necessary changes to the data by typing into the field, without having to access another screen or obtain clearance from the railroad, or a contractor or subcontractor to a railroad.

(ii) A railroad, or a contractor or a subcontractor to a railroad, shall allow employees to complete a verbal quick tie-up, or to transmit by facsimile or other electronic means the information necessary for a quick tie-up, if—

(A) The employee is released from duty at a location at which there is no terminal available;

(B) Computer systems are unavailable as a result of technical issues; or

(C) Access to computer terminals is delayed and the employee has exceeded his or her maximum allowed time on duty.

(2) No two individuals have the same electronic identity.

(3) A record cannot be deleted or altered by any individual after the record is certified by the employee who created the record.

(4) Any amendment to a record is either—

(i) Electronically stored apart from the record that it amends, or

(ii) Electronically attached to the record as information without changing the original record.

(5) Each amendment to a record uniquely identifies the individual making the amendment.

(6) The electronic system provides for the maintenance of inspection records as originally submitted without corruption or loss of data.

(7) Supervisors and crew management officials can access, but cannot delete or alter the records of any employee after the report-for-duty time of the employee or after the record has been certified by the reporting employee.

(b) *Identification of the individual entering data.* The program must be capable of identifying each individual who entered data for a given record. If a given record contains data entered by more than one individual, the program must be capable of identifying each individual who entered specific information within the record.

(c) *Capabilities of program logic.* The program logic must have the ability to—

(1) Calculate the total time on duty for each employee, using data entered by the employee and treating each identified period as defined in § 228.5;

(2) Identify input errors through the use of program edits;

(3) Require records, including outstanding records, the completion of which was delayed, to be completed in chronological order;

(4) Require reconciliation when the known (system-generated) prior time off differs from the prior time off reported by an employee;

(5) Require explanation if the total time on duty reflected in the certified record exceeds the statutory maximum for the employee;

(6) Require the use of a quick tie-up process when the employee has exceeded or is within three minutes of his or her statutory maximum time on duty;

(7) Require that the employee's certified final release be not more than three minutes in the future, and that the employee may not certify a final release time for a current duty tour that is in the past, compared to the clock time of the computer system at the time that the record is certified, allowing for changes in time zones;

(8) Require automatic modification to prevent miscalculation of an employee's total time on duty for a duty tour that spans changes from and to daylight savings time;

(9) For train employees, require completion of a full record at the end of a duty tour when the employee initiates a tie-up with less than the statutory maximum time on duty and a quick tie-up is not mandated;

(10) For train employees, disallow use of a quick tie-up when the employee has time remaining to complete a full record, except as provided in paragraph (a)(1)(ii) of this section.

(11) Disallow any manipulation of the tie-up process that precludes compliance with any of the requirements specified by paragraphs (c)(1) through (c)(10) of this section.

(d) *Search capabilities.* The program must contain sufficient search criteria to allow any record to be retrieved through a search of any one or more of the following data fields, by specific date or by a date range not exceeding 30 days for the data fields specified by paragraphs (d)(1) and (d)(2) of this section, and not exceeding one day for the data fields specified by paragraphs (d)(3) through (d)(7) of this section:

(1) Employee, by name or identification number;

(2) Train or job symbol;

(3) Origin location, either yard or station;

(4) Released location, either yard or station;

(5) Operating territory (i.e., division or service unit, subdivision, or railroad-identified line segment);

(6) Certified records containing one or more instances of excess service; and

(7) Certified records containing duty tours in excess of 12 hours.

(e) The program must display individually each train or job assignment within a duty tour that is required to be reported by this part.

§ 228.205 Access to electronic records.

(a) FRA inspectors and State inspectors participating under 49 CFR Part 212 must have access to hours of service records created and maintained electronically that is obtained as required by § 228.9(b)(4).

(b) Railroads must establish and comply with procedures for providing an FRA inspector or participating State inspector with an identification number and temporary password for access to the system upon request, which access will be valid for a period not to exceed seven days. Access to the system must be provided as soon as possible and no later than 24 hours after a request for access.

(c) The inspection screen provided to FRA inspectors and participating State inspectors for searching employee hours of duty records must be formatted so that—

(1) Each data field entered by an employee on the input screen is visible to the FRA inspector or participating State inspector; and

(2) The data fields are searchable as described in § 228.203(d) and yield access to all records matching criteria specified in a search.

(3) Records are displayed in a manner that is both crew-based and duty tour oriented, so that the data pertaining to all employees who worked together as part of a crew or signal gang will be displayed together, and the record will include all of the assignments and activities of a given duty tour that are required to be recorded by this part.

§ 228.207 Training.

(a) *In general.* A railroad, or a contractor or subcontractor to a railroad, shall provide its train employees, signal employees, and dispatching service employees and its supervisors of these employees with initial training and refresher training as provided in this section.

(b) *Initial training.* (1) Initial training shall include the following:

(i) Instructional components presented in a classroom setting or by electronic means; and

(ii) Experiential (''hands-on'') components; and

(iii) Training on—

(A) The aspects of the hours of service laws relevant to the employee's position that are necessary to understanding the proper completion of the hours of service record required by this part, and

(B) The entry of hours of service data, into the electronic system or on the appropriate paper records used by the railroad or contractor or subcontractor to a railroad for whom the employee performs covered service; and

(iv) Testing to ensure that the objectives of training are met.

(2) Initial training shall be provided—

(i) To each current employee and supervisor of an employee as soon after May 27, 2009 as practicable; and

(ii) To new employees and supervisors prior to the time that they will be required to complete an hours of service record or supervise an employee required to complete an hours of service record.

(c) *Refresher training.* (1) The content and level of formality of refresher training should be tailored to the needs of the location and employees involved, except that the training shall—

(i) Emphasize any relevant changes to the hours of service laws, the reporting requirements in this part, or the carrier's electronic or other recordkeeping system since the employee last received training; and

(ii) Cover any areas in which supervisors or other railroad managers are finding recurrent errors in the employees' records through the monitoring indicators.

(2) Refresher training shall be provided to each employee any time that recurrent errors in records prepared by the employee, discovered through the monitoring indicators, suggest, for example, the employee's lack of understanding of how to complete hours of service records.

Issued in Washington, DC, on May 19, 2009.

Karen J. Rae,

Deputy Administrator.

[FR Doc. E9–12059 Filed 5–21–09; 4:15 pm]

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Federal Register

Wednesday,
May 27, 2009

Part IV

Securities and Exchange Commission

17 CFR Parts 275 and 279

Custody of Funds or Securities of Clients by Investment Advisors; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–2876; File No. S7–09–09]

RIN 3235–AK32

Custody of Funds or Securities of Clients by Investment Advisers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to the custody rule under the Investment Advisers Act of 1940 and related forms. The amendments, among other things, would require registered investment advisers that have custody of client funds or securities to undergo an annual surprise examination by an independent public accountant to verify client funds and securities. In addition, unless client accounts are maintained by an independent qualified custodian (*i.e.*, a custodian other than the adviser or a related person), the adviser or related person must obtain a written report from an independent public accountant that includes an opinion regarding the qualified custodian's controls relating to custody of client assets. Finally, the amendments would provide the Commission with better information about the custodial practices of registered investment advisers. The amendments are designed to provide additional safeguards under the Advisers Act when an adviser has custody of client funds or securities.

DATES: Comments must be received on or before July 28, 2009.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number S7–09–09 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

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 S7–09–09. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Vivien Liu, Senior Counsel, Daniel S. Kahl, Branch Chief, or Sarah A. Bessin, Assistant Director, at (202) 551–6787 or *IArules@sec.gov,* Office of Investment Adviser Regulation, Division of Investment Management, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (''Commission'') is requesting public comment on proposed amendments to rule 206(4)–2 [17 CFR 275.206(4)–2], rule 204–2 [17 CFR 275.204–2] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (the ''Advisers Act'' or ''Act''), to Form ADV [17 CFR 279.1], and to Form ADV–E [17 CFR 279.8].

Table of Contents

I. Background
II. Discussion
III. General Request for Comment
IV. Paperwork Reduction Act
V. Cost-Benefit Analysis
VI. Initial Regulatory Flexibility Analysis
VII. Effects on Competition, Efficiency and Capital Formation
VIII. Consideration of Impact on the Economy
IX. Statutory Authority; Text of Proposed Rule and Form Amendments

I. Background

Rule 206(4)–2 regulates the custody practices of investment advisers registered under the Advisers Act.[1] Unlike banks and broker-dealers, investment advisers typically do not maintain physical custody of client funds or securities but rather may have custody because they have the authority to obtain client assets, such as by deducting advisory fees from a client account, writing checks or withdrawing funds on behalf of a client, or by acting in a capacity, such as general partner of a limited partnership, that gives an adviser or its supervised person the authority to withdraw funds or securities from the limited partnership's account. Rule 206(4)–2 requires advisers that have custody of client funds or securities to implement controls designed to protect those client assets from being lost, misused, misappropriated or subject to the advisers' financial reverses, such as insolvency. The rule contains two primary protections.

First, the rule requires advisers that have custody, with certain limited exceptions, to maintain client funds or securities with a ''qualified custodian.'' [2] Qualified custodians under the rule include the types of financial institutions to which clients and advisers customarily turn for custodial services, including banks, registered broker-dealers, and registered futures commission merchants.[3] These institutions' custodial activities are subject to extensive regulation and oversight.[4]

[1] Unless otherwise noted, when we refer to rule 206(4)–2 or any paragraph of the rule, we are referring to 17 CFR 275.206(4)–2 of the Code of Federal Regulations in which the rule is published. *See also Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2176 (Sept. 25, 2003) [68 FR 56692 (Oct. 1, 2003)] (''2003 Adopting Release''). From time to time for convenience, this release refers to rule 206(4)–2 as the ''custody rule.''

[2] Rule 206(4)–2(a)(1).

[3] Rule 206(4)–2(c)(3) (defining ''qualified custodian''). In addition, ''qualified custodian'' includes a foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps advisory clients' assets in customer accounts segregated from its proprietary assets. Foreign custody arrangements may be necessary to permit clients to trade in securities traded in foreign markets, or to accommodate clients with existing relationships with foreign institutions. When we amended the custody rule in 2003, we explained that when an adviser selects a foreign financial institution to hold clients' assets, the adviser's fiduciary obligations require it either to have a reasonable basis for believing that the foreign institution will provide a level of safety for client assets similar to that which would be provided by a ''qualified custodian'' in the United States or to fully disclose to clients any material risks attendant to maintaining the assets with the foreign custodian. *See* 2003 Adopting Release, at n. 22.

[4] *See Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2044 (Jul. 18, 2002) [67 FR 48579 (Jul. 25, 2002)] (''2002 Proposing Release''), at n. 30 (regulatory agencies or self-regulatory organizations require these financial institutions to carry fidelity bonds to cover possible losses caused by their employees' fraudulent activities). In addition, rule 15c3–3 [17 CFR 240.15c3–3] under the Securities Exchange Act of 1934 (the ''Exchange Act''), requires a broker-dealer to segregate customer funds held by the broker-dealer for the accounts of customers and to take certain steps to protect customer assets. Under rules 17a–3 and 17a–4 under the Exchange Act [17 CFR 240.17a–3 and 17a–4] a broker-dealer must create and maintain current, specified books and records to allow the broker-dealer to easily identify what assets belong to each customer. Similarly, national banks, Federal

Second, the rule requires that an adviser with custody of client assets have a reasonable belief that the qualified custodian holding the assets provides account statements directly to clients, or investors in pooled investment vehicles, at least quarterly.[5] Clients can use the statements they receive from the qualified custodians to compare them with the statements (or other information) they receive from their advisers to determine whether account transactions, including deductions to pay advisory fees, are proper. An adviser to a pooled investment vehicle is not required to comply with the rule's account statement delivery requirement if the pooled investment vehicle is audited at least annually and distributes its audited financial statements to investors in the pool within 120 days of the end of its fiscal year.[6]

If, however, clients do not receive account statements directly from their qualified custodians, the adviser must itself deliver quarterly account statements to clients and engage an independent public accountant to verify the client assets in a surprise examination that must occur at least once during each calendar year.[7] During a surprise examination, an independent public accountant generally must (i) confirm with the custodian *all* cash and securities held by the custodian, including physical examination of securities if applicable, and will reconcile all such cash and securities to the books and records of client accounts maintained by the adviser, (ii) verify the books and records of client accounts maintained by the adviser by examining the security records and transactions since the last examination and by confirming with clients *all* funds and securities in client accounts, and (iii) confirm with clients, on a test basis, closed accounts or securities or funds that have been returned since the last examination.[8] The results of the examination must be reported by the accountant to the Commission.[9]

The surprise examination may uncover problems indicating that client assets may be at risk. Accordingly, we have designed the surprise examination requirement to provide timely information to the Commission staff in the event that the accountant uncovers a problem during the examination. Under the existing rule, the accountant must notify our Office of Compliance Inspections and Examinations within one business day of finding any material discrepancies during an examination.[10]

II. Discussion

In recent months, the Commission has brought several enforcement actions against investment advisers and broker-dealers alleging fraudulent conduct, including misappropriation or other misuse of investor assets.[11] The Commission is intensively investigating this conduct, including the role of the investment advisers, broker-dealers, and individuals that may have participated in the conduct. We continue to work with criminal authorities and other Federal and State regulators to see that the full weight of the law is brought to bear on any advisers and broker-dealers that are found to have betrayed investor trust and confidence. In addition, our staff is conducting examinations of broker-dealer and adviser custodial practices designed to evaluate whether the assets entrusted to these firms are appropriately accounted for and that the firms have in place controls reasonably designed to prevent the theft, misappropriation or other misuse of investor assets.

We also are undertaking a comprehensive review of the rules regarding the safekeeping of investor assets in order to determine changes we might make that would decrease the likelihood that client assets are misused, or would increase the likelihood that fraudulent activities are discovered earlier and client losses are thereby reduced. We are proposing today for comment several revisions to rule 206(4)–2 under the Advisers Act that are designed to improve the safekeeping of client assets.

A. Annual Surprise Examination of Client Assets

1. Application to All Advisers With Custody

The Commission proposes to require that all registered investment advisers with custody of client assets engage an independent public accountant to conduct an annual surprise examination

savings associations, and other U.S. banking institutions are subject to extensive regulation and oversight. *See* 12 U.S.C. 92a. (national banks must have authorization from the Comptroller of the Currency before establishing a trust department and taking custody of customer assets); 12 U.S.C. 1464(n) (Federal savings associations shall segregate all assets held in any fiduciary capacity and shall keep a separate set of books and records showing all transactions in the accounts); *Comptroller's Handbook,* Custody Services at 6, 15 (Jan. 2002) (a bank should have adequate systems in place to identify, measure, monitor, and control risks in the custody services area and a custodian's accounting records and internal controls should ensure that assets of each custody account are kept separate from the assets of the custodian).

[5] Rule 206(4)–2(a)(3)(i).

[6] Rule 206(4)–2(b)(3).

[7] Rule 206(4)–2(a)(3)(ii). Under the rule, an adviser is *not* required to obtain a surprise examination if the qualified custodian delivers account statements directly to the adviser's clients. An adviser to a pooled investment vehicle that is unable, or chooses not to, rely on the exception for audited financial statements and that does not have a qualified custodian send the required account statements to pool investors must provide account statements to pool investors and the adviser must obtain a surprise examination of pool assets.

[8] As stated in note 33 of the 2003 Adopting Release, the accountant must perform the examination in accordance with U.S. Generally Accepted Auditing or Attestation Standards and the standards established by the Commission, except that the accountant must verify *all* or substantiate *all* client funds and securities covered by the examination. The examination should include confirmation of all client cash and securities of which an adviser has custody, regardless of whether they are held by qualified custodians, and reconciliation of all such cash and securities to the books and records of client accounts maintained by the adviser, as well as confirmation of such information with the adviser's clients. *See Nature of Examination Required to be Made of All Funds and Securities Held in Custody of Investment Advisers and Related Accountant's Certificate,* Investment Advisers Act Release No. 201 and Accounting Series Release No. 103 (May 26, 1966) [31 FR 7821 (Jun. 2, 1966)]. Section 404.01.b. of the Commission's Codification of Financial Reporting Policies. The examination must be performed at a time chosen by the accountant without prior notice or announcement to the adviser, and the timing of the examination must be irregular from year to year, so that the adviser will be unaware of the date on which it will take place. Rule 206(4)–2(a)(3)(ii)(B).

[9] *Id.*

[10] Rule 206(4)–2(a)(3)(ii)(C). As we stated in note 34 of the 2003 Adopting Release, the independent public accountant may first take reasonable steps to establish the basis for believing a material discrepancy exists. The obligation to notify the Commission arises once the accountant has a basis for believing there is a material discrepancy. Ordinarily, an accountant should be able to determine promptly whether it has a basis for believing there is a material discrepancy.

[11] *See, e.g., SEC* v. *Donald Anthony Walker Young, et al.,* Litigation Release No. 21006 (Apr. 20, 2009) (complaint alleges registered investment adviser and its principal misappropriated in excess of $23 million, provided false account statements to investors in limited partnership, and provided false custodial statements to limited partnership's introducing broker); *SEC* v. *Isaac I. Ovid, et al.,* Litigation Release No. 20998 (Apr. 14, 2009) (complaint alleges that defendants, including registered investment adviser and manager of purported hedge funds, misappropriated in excess of $12 million); *SEC* v. *The Nutmeg Group, LLC, et al.,* Litigation Release No. 20972 (Mar. 25, 2009) (complaint alleges that registered investment adviser misappropriated in excess of $4 million of client assets, failed to maintain client assets with a qualified custodian, and failed to obtain a surprise examination); *SEC* v. *WG Trading Investors, L.P., et al.,* Litigation Release No. 20912 (Feb. 25, 2009) (complaint alleges that registered broker-dealer and affiliated registered adviser orchestrated fraudulent investment scheme, including misappropriating as much as $554 million of the $667 million invested by clients and sending clients misleading account information); *SEC* v. *Stanford International Bank, et al.,* Litigation Release No. 20901 (Feb. 17, 2009) (complaint alleges that the affiliated bank, broker-dealer, and advisers colluded with each other in carrying out an $8 billion fraud); *SEC* v. *Bernard L. Madoff, et al.,* Litigation Release No. 20889 (Feb. 9, 2009) (complaint alleges that Madoff and Bernard L. Madoff Investment Securities LLC (a registered investment adviser and registered broker-dealer) committed a $50 billion fraud).

of client assets.[12] When we adopted the custody rule in 1962, each adviser with custody of client securities or funds was required by rule 206(4)–2 to engage an independent public accountant to conduct an annual surprise examination.[13] In 2003, we amended the rule to eliminate the annual surprise examination with respect to client accounts for which the adviser has a reasonable belief that ''qualified custodians'' provide account statements directly to clients.[14] We believed that direct delivery of account statements by qualified custodians would provide clients confidence that any erroneous or unauthorized transactions would be reflected and, as a result, would be sufficient to deter advisers from fraudulent activities.[15]

We have decided to revisit the 2003 rulemaking in light of the significant enforcement actions we have recently brought alleging misappropriation of client assets.[16] We believe that a surprise examination by an independent public accountant would provide ''another set of eyes'' on client assets, and thus additional protection against their misuse. Moreover, an independent public accountant may identify misuse that clients have not, which would result in the earlier detection of fraudulent activities and reduce resulting client losses.[17] Therefore, we propose to require all registered investment advisers with custody of client assets to obtain an annual surprise examination regardless of whether a qualified custodian directly provides statements to clients or, in the case of a pooled investment vehicle, the pool is audited at least annually and distributes its audited financial statements to its limited partners (or other investors) within 120 days of the end of its fiscal year. We are proposing a number of additional enhancements to the rule, discussed below, including additional adviser and accountant reporting requirements and independent review of custody controls in certain circumstances, that we believe would improve the utility of the surprise examination requirement and address some of the concerns we had in 2003.

We request comment on our proposal to require investment advisers with custody of client assets to undergo an annual surprise examination. Would an annual surprise examination increase protections afforded to advisory clients, including pooled investment vehicles (and the investors in those vehicles)? Should we except from the surprise examination requirement advisers that have custody of client funds or securities solely as a result of their authority to withdraw advisory fees from client accounts?[18] Is this form of custody, which is common to advisers with discretionary authority, less likely to be subject to abuse? Should we instead specify requirements or restrictions regarding withdrawing fees from client accounts? If so, what should they be? Are there alternatives to the surprise examination that might provide similar protections, or are there additional requirements that we should also consider? For example, should we instead (or also) amend rule 206(4)–7, which requires advisers to adopt compliance policies and procedures administered by a chief compliance officer, to require that the chief compliance officer submit a certification to us on a periodic basis that all client assets are properly protected and accounted for on behalf of clients?[19] Should we specify certain minimum procedures that each chief compliance officer should implement to assure herself that all client assets are properly protected and accounted for? Given the variety of custodial arrangements, is it feasible for us to specify minimum requirements? Should the rule require surprise examinations to be conducted more frequently than annually or, alternatively, on a regular periodic basis, *e.g.*, semi-annually?

Many advisers have custody as a result of serving as a general partner (or in some other capacity) of a limited partnership or other form of pooled investment vehicle. The proposed rule would continue to except advisers from the requirement to have a qualified custodian send account statements with respect to a pooled investment vehicle that is audited at least annually and distributes its audited financial statements to its limited partners (or other investors) within 120 days of the end of its fiscal year.[20] It would not, however, except such advisers from the surprise examination requirement. The annual audit serves a similar purpose as the surprise examination because it involves a verification process, although it is not required to cover *all* funds or securities.[21] Should we continue to except advisers from the surprise examination requirement with respect to client assets held in pooled vehicles that are audited at least annually?

As explained above, the proposed rule would require all registered advisers that have custody of client assets, including advisers that are also registered as broker-dealers and thus are permitted to act as qualified custodians for their clients' assets, to obtain an annual surprise examination. Under the Exchange Act, a broker-dealer's financial statements must be audited annually by a registered public accounting firm.[22] This audit must include a review of the broker-dealer's procedures for safeguarding securities.[23] The scope of this review must be sufficient for the auditor to provide reasonable assurance that material inadequacies do not exist in a broker-dealer's procedures for safeguarding securities.[24] Would the surprise

[12] Proposed rule 206(4)–2(a)(4). Proposed rule 206(4)–2(c)(3) would define independent public accountant as a public accountant that meets the standards for independence described in rule 2–01(b) and (c) of Regulation S–X. As discussed further below, the annual surprise examination requirement would be *in addition* to the requirement that the adviser have a reasonable belief that qualified custodians deliver account statements directly to clients.

[13] *Adoption of Rule 206(4)–2 under the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 123 (Feb. 27, 1962) [27 FR 2149 (Mar. 6, 1962)]. In 1997, we amended the rule to make it applicable only to advisers who are registered, or required to be registered, with the Commission. *Rules Implementing Amendments to the Investment Advisers Act of 1940,* Investment Advisers Act Release No. 1633 (May 15, 1997) [62 FR 28112 (May 22, 1997)] at Section II.I.5.

[14] *See* 2003 Adopting Release, at Section II.C.

[15] The custody rule provides a limited exception to the requirement of maintaining client assets with a qualified custodian with respect to mutual fund shares and certain privately offered securities. Rule 206(4)–2(b)(1) and (2). As a result, these securities may not be reflected on the qualified custodian's account statements.

[16] *See supra* note 11.

[17] The independent public accountant conducting a surprise examination would independently verify all client funds and securities of which an adviser has custody, including those maintained with a qualified custodian and those that are not maintained with a qualified custodian, such as certain privately offered securities and mutual fund shares. *See supra* note 15.

[18] Advisers registered with the Commission that have authority to deduct advisory fees from client assets have custody and are subject to rule 206(4)–2, but are not required to report that they have custody on Form ADV. *See* Item 9 of Part 1 of Form ADV (''If you are registering or registered with the SEC and you deduct your advisory fees directly from your *clients'* accounts but you do not otherwise have custody of your *clients'* funds or securities, you may answer ''no'' to Item 9A.(1) and 9A.(2).''). This would not change under the proposed rule.

[19] Rule 206(4)–7 (17 CFR 275.206(4)–7). When we adopted rule 206(4)–7 in 2003, we stated that an adviser's compliance policies and procedures adopted and implemented under the rule should address ''safeguarding of client assets from conversion or inappropriate use by advisory personnel.'' *See Compliance Programs of Investment Companies and Investment Advisers,* Investment Advisers Act Release 2204 (Dec. 17, 2003) [68 FR 74714 (Dec. 24, 2003)], at Section II.A.1.

[20] Proposed rule 206(4)–2(b)(3).

[21] *See* AICPA Investment Company Audit and Accounting Guide, May 1, 2008.

[22] Section 17(e)(1)(A) [15 U.S.C. 78q(e)(1)(A)] of the Exchange Act.

[23] Exchange Act Rule 17a–5(g) [17 CFR 240.17a-5(g)].

[24] *Id.*

examination's ''verification'' of client assets provide additional protection for clients of advisers that are also broker-dealers? Do the custody obligations for banks present the same issues if an adviser is also a bank and maintains custody of client assets? Instead of requiring a surprise examination for advisers that also act as the qualified custodian for their clients' assets, should we instead consider a different approach, such as requiring these advisers to segregate custodial duties from advisory duties and implement additional internal controls to protect client assets?

We also request comment on whether we should revise or expand the guidance we have provided regarding the surprise examination.[25] For example, are there other procedures an accountant should perform as part of a surprise examination? Should we require an accountant to perform testing on the valuation of securities, including privately offered securities, as part of a surprise examination? Should we require an adviser to certify a listing of funds and securities and client accounts that were examined by the accountant as part of the surprise examination? Are there any procedures currently required to be performed as part of a surprise examination that are no longer necessary? If so, what procedures and why are they no longer necessary? For example, is confirming *all* client balances necessary to adequately protect investors? If not, what extent of confirmation would be appropriate? Are there any procedures currently required to be performed as part of a surprise examination that should be clarified? If so, how should they be clarified? Have investment advisers' custodial practices or operations changed such that we should revise our existing guidance on performing the surprise examination?[26] If so, what revisions should we make? If the proposed rule is adopted and a greater variety of advisers become subject to the rule's surprise examination requirement, should we provide additional guidance to assist different types of advisers and their accountants in complying with the surprise examination requirement? If so, what additional guidance should we provide?

2. Commission Reporting

We propose to amend rule 206(4)–2 to require investment advisers subject to the rule to enter into a written agreement with an independent public accountant to conduct the surprise examination requiring the accountant, among other things, to notify the Commission within one business day of finding material discrepancies, and to submit Form ADV–E to the Commission accompanied by a certificate within 120 days of the time chosen by the accountant for the surprise examination, stating that it has examined the funds and securities and describing the nature and extent of the examination.[27] The accountant's certificate describing the nature and extent of the examination assists the Commission's examination staff in identifying and assessing risks raised by the investment adviser's custodial practices and in determining the scope of the Commission staff's examination of an investment adviser. The reporting by the independent public accountant of a material discrepancy provides the Commission's examination staff with notice of a possible problem with the investment adviser's custodial practices. Should we require additional information be included in the accountant's certificate? Although we are not proposing to change the requirement, is the term ''material discrepancy,'' as used in the context of a surprise examination, widely understood by independent public accountants? If not, should we define the term or provide guidance as to the requirement? Should we require the accountant's certificate to be provided to clients or investors in pooled investment vehicles?

Currently, the custody rule requires that the accountant that performs the surprise examination file Form ADV–E with the Commission within 30 days of the completion of the examination stating that it has examined the funds and securities and describing the nature and extent of the examination. Our examination staff has found that an adviser's surprise examination may sometimes continue for an extended period of time. We propose to amend the rule to require that the accountant instead file Form ADV–E within 120 days of the time chosen by the accountant for the surprise examination. As described above, 120 days is the period of time in which a pooled investment vehicle managed by an adviser relying on the rule's annual audit exception must distribute its audited financial statements to investors in the pool.[28] Accordingly, we believe 120 days should be sufficient time for an accountant to complete a surprise examination and file Form ADV–E. Would this change create any difficulties for the accountant or the adviser to comply with the filing requirement? Is 120 days reasonable for all types of advisers? If not, what time limit should we require for the surprise examination?

In addition, we propose that the written agreement require the independent public accountant to submit Form ADV–E to the Commission within four business days of its resignation, dismissal from, or other termination, of the engagement, or upon removing itself or being removed from consideration for being reappointed, accompanied by a statement that includes (i) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant, and (ii) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination (''termination statement'').[29] This information would

[25] *See supra* note 8.

[26] *See Nature of Examination Required to be Made of All Funds and Securities Held in Custody of Investment Advisers and Related Accountant's Certificate, supra* note 8.

[27] Proposed rule 206(4)–2(a)(4). The written agreement would also require, in accordance with the current requirements of rule 206(4)–2, the independent public accountant to perform the surprise examination. The current rule does not specifically require that the adviser enter into a written agreement with the independent public accountant. Rule 206(4)–2(a)(3)(ii)(B) and (C). Advisers would have to keep these written agreements under rule 204–2(a)(10) [17 CFR 275.204–2(a)(10)] as they would be written agreements that an adviser enters into in its business as such. The obligation to maintain the records would apply for five years from the end of the fiscal year during which the last entry was made, the first two years in an appropriate office of the investment adviser.

[28] Rule 206(4)–2(b)(3).

[29] Proposed rule 206(4)–2(a)(4)(iii). Similarly, we require companies registered under Section 12 or 15(d) of the Exchange Act to file with us, within four business days of the dismissal or resignation of their auditors, a Form 8–K containing information relating to the circumstances under which the auditor was terminated, whether the auditor had issued any adverse reports about the company, whether there had been any disagreements between the company and the auditor and certain other information. The former auditor must respond in a publicly available document whether it agrees with the company's statement. *Form 8–K, Current Report*, Item 4.01, 17 CFR 249.308; *Changes In and Disagreements With Accountants on Accounting and Financial Disclosure*, Regulation S–K, Item 304, [17 CFR 229.304]. We also require broker-dealers registered with us to file a notice with us within 15 business days of the dismissal or resignation of their auditors. In the notice, the broker-dealer must, among other things, disclose any problem in the past two years of which, if not resolved, the former auditor would have to make reference in its report and state whether the former auditor's report of the past two years contained any adverse or qualified opinion or any disclaimer of opinion. The broker-dealer must attach to its notice the former auditor's statement as to whether it agrees with the broker-dealer's disclosure. See rule 17a–5(f)(4) under the Exchange Act. We have chosen the four business day standard to provide us with notice of potential problems with an investment adviser's custody of

Continued

permit our staff to compare information provided by the adviser with the perspective of the accountant, and to further evaluate the need for an examination of the adviser to determine whether client assets are at risk. We request comment on this proposed filing requirement. Is this the right standard for notification of potential problems or disagreements between an adviser and its independent public accountant performing the surprise examination? Is it too broad? Too narrow? Is there more information that should be required in this notification? If so, what additional information should be required? Is the required explanation of the reason for the withdrawal sufficient? Should this notification requirement provide for more detailed standards such as those included in Item 304(a)(1) of Regulation S–K with respect to a change in an issuer's independent public accountant?

We propose to have accountants file Form ADV–E with us electronically, through the Investment Adviser Registration Depository (''IARD''), which would enhance our ability to use the information by, for example, comparing information provided by advisers and their independent public accountants and thus to identify potential custodial risks. We currently are working with our contractor to develop changes to the IARD system that would permit it to accept Form ADV–E and allow us to make the filings available through our Web site.[30] We request comment on whether we should require that Form ADV–E be filed electronically, and whether we should make the accountant's termination statement publicly available.

3. Privately Offered Securities

We also propose to amend the rule to make privately offered securities that investment advisers hold on behalf of their clients subject to the surprise examination requirement.[31] Currently, privately offered securities are excluded from all aspects of the custody rule.[32] While it may not be practical to require that these securities in all cases be held by a qualified custodian,[33] we believe subjecting these securities to the surprise examination would provide greater assurance that such securities are properly safeguarded in furtherance of the purposes of the rule. We request comment on the feasibility of requiring that advisers obtain a surprise examination with respect to privately offered securities.

B. Custody by Adviser and Its Related Persons

1. Custody by Related Persons

The Commission proposes to amend rule 206(4)–2 to provide that an adviser has custody of any client securities or funds that are directly or indirectly held by a ''related person'' in connection with advisory services provided by the adviser to its clients.[34] A ''related person'' would be a person directly or indirectly controlling or controlled by the adviser and any person under common control with the adviser.[35] For purposes of this definition we would define ''control'' as the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise.[36] As a result, the protections of the rule would be afforded to clients when their funds and securities are not held with an independent custodian, but rather with the adviser itself or indirectly through a related person.[37]

Under rule 206(4)–2, an adviser has custody of client assets if it holds, directly or indirectly, client funds or securities or has any authority to obtain possession of them.[38] In our release adopting the 2003 amendments to rule 206(4)–2, we explained that an adviser *may* have custody of client assets under circumstances in which the adviser or its personnel have access to those client assets through a related person, and cited one of our staff interpretive letters that set forth factors the staff will consider in determining whether an adviser has ''indirect'' custody of client assets.[39] The proposed amendments would simply deem advisers whose ''related persons'' hold client assets to have custody under the rule if those assets are held by the related person in connection with the advisory services provided by the adviser. We believe that the risks to advisory clients that arise as a result of a related person's ability to obtain client assets, regardless of the separation between the adviser and a related person, may be substantial enough to require the adviser to comply with the custody rule. The ''in connection with'' limitation of the proposed rule is designed to prevent an adviser from being deemed to have custody of client assets held by a related person broker-dealer (or other qualified custodian) with respect to which the adviser does not provide advice.

Should we deem an adviser to have custody if its related persons hold assets in connection with the adviser's advisory services? Are there circumstances where a related person's custody of client assets should not be imputed to the adviser? If so, should the rule contain a rebuttable presumption that an adviser has custody if any of its related persons have custody of advisory client assets?[40] What factors, if any, should we identify for advisers to consider when assessing whether the presumption can be rebutted?[41]

2. Internal Control Report and PCAOB Registration and Inspection

The Commission also proposes to amend rule 206(4)–2 to require that, if an independent custodian does not maintain client assets but the adviser or a related person instead serves as a qualified custodian for client funds or securities under the rule in connection

client funds or securities at an earlier time to allow our staff to take prompt action if necessary.

[30] The IARD system will not be able to accept electronic filings of Form ADV–E until it is upgraded with this function. If the proposed amendments are adopted, it is possible that accountants performing surprise examinations may have to continue paper filing of Form ADV–E for a period of time until the IARD system has been upgraded. Public access to these filings would be made available on our Web site through the Investment Adviser Public Disclosure system (IAPD).

[31] ''Privately offered securities'' are defined by rule 206(4)–2(b)(2) as securities that are (i) acquired from the issuer in a transaction or chain of transactions not involving any public offering, (ii) uncertificated, and ownership thereof is recorded only on the books of the issuer or its transfer agent in the name of the client, and (iii) transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer. The proposed rule would retain this definition.

[32] *Id.*

[33] Ownership of private securities is recorded only on the books of the issuer, which poses difficulties to maintain them in accounts with qualified custodians. *See* 2003 Adopting Release, at Section II.B.

[34] Proposed rule 206(4)–2(c)(2) (defining ''custody'').

[35] Proposed rule 206(4)–2(c)(6) (defining ''related person'').

[36] Proposed rule 206(4)–2(c)(1) (defining ''control''). Form ADV [17 CFR 297.1] also uses the same definition.

[37] Today, an adviser may, for example, have custody if its related person holds assets of the adviser's clients and the adviser either controls the related person's operations or has access to the client assets through the related person. *See* section 208(d) of the Advisers Act [15 U.S.C. 80b–8(d)] (an adviser may not, indirectly or through or by any other person, do any act or thing that would be unlawful for the adviser to do directly).

[38] Rule 206(4)–2(c)(1) (defining ''custody'').

[39] *See* 2003 Adopting Release at n.4 (citing *Crocker Investment Management Corp.*, SEC Staff No-Action Letter (Apr. 14, 1978)). Our staff would withdraw this no-action letter if we adopt the proposed amendment.

[40] *Cf.* Rule 206(4)–4(b) (establishing a rebuttable presumption that certain legal or disciplinary events are material and therefore must be disclosed to clients).

[41] *See, e.g., Financial and Disciplinary Information That Investment Advisers Must Disclose to Clients*, Investment Advisers Act Release No. 1083 (Sept. 25, 1987) [52 FR 36915 (Oct. 2, 1987)] (discussing factors an adviser should consider in assessing the presumption that certain disciplinary information is material and therefore should be disclosed to clients).

with advisory services the adviser provides to clients, the adviser must obtain, or receive from the related person, no less frequently than once each calendar year a written report (''internal control report''), which includes an opinion from an independent public accountant registered with, and subject to regular inspection by, the Public Company Accounting Oversight Board (''PCAOB''), with respect to the adviser's or related person's controls relating to custody of client assets.[42] The adviser would be required to maintain the internal control report in its records and make it available to the Commission or its staff upon request.[43]

We are proposing this addition to the rule because we believe maintaining client assets with the adviser or a related person instead of with an independent custodian can present higher risks to advisory clients. Indeed, several of the recent enforcement actions we have brought alleging misappropriation of client assets by investment advisers have involved advisers or related persons that maintained client assets.[44] While advisers that are themselves, or use related persons that are, qualified custodians would be required to obtain a surprise examination, the utility of the surprise examination may be limited because the independent public accountant seeking to verify client assets may have to rely on custodial reports issued by the adviser or its related person. Because of the relationship between the adviser and the custodian, we believe that there is a greater risk that the custodian could be a party to any fraud and therefore the custodian's reports could be compromised. Requiring these advisers to also obtain an internal control report would provide an additional check on the safeguards relating to client assets held by the adviser or the related person qualified custodian.

An internal control report could also significantly strengthen the utility of the surprise examination when the adviser or a related person custodian maintains client assets because the independent public accountant performing the surprise examination could obtain additional comfort that confirmations received from the qualified custodian in the course of the surprise examination are reliable and, where a broker-dealer is the qualified custodian, may be able to leverage existing tests performed in compliance with broker-dealer auditing and internal control requirements. The internal control report may also reveal control problems, which could be significant.[45] Thus, the requirement to obtain an internal control report informs the surprise examination process and may itself act as a deterrent to advisers that may consider misappropriating client assets directly or through a related person in the guise of providing custodial services as a qualified custodian.

The proposed amendments would require that the internal control report include an opinion of an independent public accountant registered with, and subject to regular inspection by, the PCAOB, that is issued in accordance with the standards of the PCAOB, with respect to the description of controls placed in operation relating to custodial services, including the safeguarding of cash and securities held by either the adviser or a related person on behalf of the adviser's clients, and tests of operating effectiveness.[46] In addition, the internal control report would also contain a description of the relevant controls, the control objectives and related controls, and the independent public accountant's tests of operating effectiveness that were performed and the results of those tests.[47]

Opinions provided in reports on controls over custodial services conducted in accordance with PCAOB standards address control objectives relevant to the custodial operations, as well as the general control environment and information systems. Control objectives relevant to custodial operations might include:

- Physical securities are safeguarded from loss or misappropriation;
- Cash and security positions are reconciled accurately and on a timely basis between the custodian and depositories, and between the custodian and accounting systems;
- Client-initiated trades are properly authorized and recorded completely and accurately in the client account;
- Securities income and corporate action transactions are processed to client accounts in an accurate and timely manner;
- Net settlement procedures for delivery and receive transactions are performed accurately;
- Documentation for the opening of accounts is received and authenticated, and established completely and accurately on the applicable system; and
- Market values of securities obtained from various outside pricing sources have been recorded accurately in client accounts.

We are proposing that the independent public accountant issuing the internal control report be registered with, and subject to regular inspection by, the PCAOB, in accordance with the rules of the PCAOB.[48] We believe that registration and the periodic inspection of an independent public accountant's overall quality control system by the PCAOB will provide us greater confidence in the quality of the internal control report.

We request comment on whether we should require advisers that serve, or have related persons that serve, as qualified custodians for client funds and securities to obtain or receive an internal control report. Would this requirement provide additional protections for clients? How would the timing of the internal control report relate to the timing of the surprise examination? Does it make sense to require both an internal control report and a surprise examination? Would these requirements be duplicative? If so, in which respects? Should we require that the independent public accountant that performs the surprise examination be a different accountant than the accountant that prepares the internal control report? Should we require that the independent public accountant that prepares the internal control report be registered with the PCAOB? If so, should we require that the independent public accountant also be subject to regular inspection by the PCAOB? Would the requirement of using independent public accountants registered with, and subject to regular

[42] Proposed rule 206(4)–2(a)(6). A report on the description of controls placed in operation and tests of operating effectiveness (commonly referred to as a ''Type II SAS 70 Report'') conducted in accordance with PCAOB standards would be sufficient for purposes of satisfying the requirements of the internal control report. *See* AU 324 *Service Organizations* of the PCAOB interim standards.

[43] Proposed rule 204–2(a)(17)(iii). *See* 17 CFR 275.204–2.

[44] *See supra* note 11.

[45] In addition to the specific procedures an independent public accountant must follow during a surprise examination, the accountant should perform any additional audit procedures it deems necessary under the circumstances. *See Nature of Examination Required to be Made of All Funds and Securities Held in Custody of Investment Advisers and Related Accountant's Certificate, supra* note 8.

[46] Proposed rule 206(4)–2(a)(6).

[47] *See supra* note 42.

[48] Proposed rule 206(4)–2(a)(6). The PCAOB performs regular inspections with respect to any registered public accounting firm that, during any of the three prior calendar years, issued an audit report with respect to at least one issuer. Under the proposed rule, an adviser's use of an independent public accountant that is registered with the PCAOB but not subject to regular inspection would *not* satisfy the rule's requirements. See Rule 4003 of the PCAOB's Bylaws and Rules, effective pursuant to Exchange Act Release No. 56738, File No. PCAOB–2006–03 (Nov. 2, 2007) and Exchange Act Release No. 49787, File No. PCAOB–2003–08 (Jun. 1, 2004).

inspection by, the PCAOB increase the costs to obtain these reports or make it too difficult to obtain a qualified accounting firm to provide an internal control report? Have we provided sufficient guidance for the independent public accountants that will produce these reports? Should we require that specific control objectives be addressed within the internal control report? If so, what control objectives? Would obtaining or receiving an internal control report present additional issues if an adviser, or its related person, that acts as qualified custodian for client assets is located outside of the United States? Would the requirement that the independent public accountant be registered with, and subject to regular inspection by, the PCAOB make it more difficult for such advisers or their related persons to engage an accountant to prepare the internal control report?

3. Surprise Examination and PCAOB Registration

We also are proposing to require that when an adviser or a related person serves as a qualified custodian for the adviser's clients' funds or securities, the surprise examination discussed above be performed by an independent public accountant registered with, and subject to regular inspection by, the PCAOB, in accordance with the rules of the PCAOB.[49] We are proposing this requirement because, as discussed above, we believe PCAOB registration and inspection will provide us greater confidence in the quality of the examination performed by the independent public accountant, which is even more important when an adviser or its related person, rather than an independent custodian, maintains client funds or securities.[50]

We request comment on this proposed amendment to the rule. Should we require that the independent public accountant performing the surprise examination of an adviser that serves, or whose related person serves, as a qualified custodian be registered with the PCAOB and subject to its inspection? Should we instead require all surprise examinations under the rule to be conducted by independent public accountants registered with, and subject to regular inspection by, the PCAOB? Does requiring the independent public accountant to be PCAOB-registered and inspected provide meaningful quality assurance for surprise examinations? Would the requirement of using a PCAOB-registered and inspected independent public accountant increase the costs to obtain these examinations or make it difficult to obtain a qualified accounting firm to conduct the examination? Would the requirement of using a PCAOB-registered and inspected independent public accountant disproportionally impact small accounting firms or small investment advisers?

If we require the independent public accountants that prepare the internal control report and perform the surprise examination to be registered with, and subject to regular inspection by, the PCAOB, should we also consider a similar revision to the current rule's audit exception for certain pooled investment vehicles? Specifically, should we require, as a condition of the adviser's reliance on the audit exception when the adviser or its related person serves as qualified custodian for funds or securities of the pool, that the independent public accountant that performs the audit of the pooled investment vehicle's financial statements be registered with, and subject to regular inspection by, the PCAOB? Would advisers to offshore pools find it too difficult to engage an auditor that is PCAOB-registered and inspected? Should we instead, or in addition, require the independent public accountant, as part of the surprise examination, to confirm security holdings with the highest-level unaffiliated subcustodian (*e.g.*, Depository Trust Company) in addition to confirming the security holdings with the qualified custodian, similar to the requirements for auditors performing examinations for advisers to registered investment companies that are deemed to have custody pursuant to rule 17f–2 of the Investment Company Act of 1940?[51]

4. Independent Qualified Custodians

We request comment on whether, as an alternative to our proposal to impose additional conditions on advisers that serve as, or have related persons that serve as, qualified custodians for client assets, we should simply amend rule 206(4)–2 to require that an independent qualified custodian hold client assets. The use of a custodian not affiliated with the adviser would address the conflict, and potentially greater risks to client assets, that may be presented when an adviser or its related person acts as custodian for client assets.

When we amended rule 206(4)–2 in 2003 to require that advisers with custody of client funds or securities maintain those assets with a qualified custodian, we acknowledged that the rule would permit advisers that are also qualified custodians to hold their clients' assets or to maintain them with related persons that are qualified custodians.[52] Most qualified custodians are banks and broker-dealers, which are subject to extensive regulation and oversight of their custodial practices, and we did not believe that permitting advisers to maintain securities with them presented additional custodial risk.[53]

We are interested in exploring the practical aspects of requiring, as an alternative to some or all of the amendments we are today proposing, an independent qualified custodian. For example, such a requirement could preclude a broker-dealer that is subject to rule 206(4)–2, *i.e.*, is also a registered investment adviser, from providing advisory services to a brokerage customer unless the customer held securities over which the adviser had discretionary authority in a brokerage account at another brokerage firm, or in a custodial account at a bank or other qualified custodian. While institutional investors such as mutual funds often hold securities and cash in custodial accounts,[54] would the use of custodial accounts be too costly for small advisory clients? Would they be consistent with the operation of certain types of combined advisory and brokerage accounts, such as wrap fee programs?

We request comment on the practical aspects of requiring advisers that have custody to maintain client assets with an independent qualified custodian. Would the requirement of using an independent qualified custodian result in greater costs? If yes, would the additional custodial protections for client assets afforded by an independent qualified custodian warrant the additional costs? Would the

[49] Proposed rule 206(4)–2(a)(6)(i).

[50] *Cf. SEC v. David G. Friehling, C.P.A., et al.*, Litigation Release No. 20959 (Mar. 18, 2009) (Commission charged auditors with fraud alleging, among other things, that auditors misrepresented that the financial statements of Bernard L. Madoff Investment Securities LLC (BMIS) were audited pursuant to Generally Accepted Auditing Standards, including the requirements to maintain auditor independence and perform audit procedures regarding custody of securities; did not perform a meaningful audit of the BMIS; and did not perform procedures to confirm that the securities BMIS purportedly held on behalf of its customers even existed).

[51] *See* American Institute of Certified Public Accountants, *Audit and Accounting Guide: Investment Companies § 2.160 Footnote 47 (May 1, 2008),* which requires confirmation of security holdings with the highest-level of unaffiliated subcustodian in connection with examinations performed pursuant to rule 17f–2 of the Investment Company Act of 1940 [17 CFR 270.17f–2].

[52] *See* 2003 Adopting Release at Section II.B.

[53] *See* 2002 Proposing Release at Section II.

[54] According to Lipper's LANA Database, more than 95 percent of registered open-end investment company assets are held in custody at a bank or trust company (based on Dec. 31, 2008 data).

requirement result in greater burdens on advisory clients of firms that are registered both as investment advisers and broker-dealers or cause them to lose access to services or other efficiencies they currently receive? Is there any reason why the custodial protections afforded by the banking laws and our rules under the Exchange Act (and the rules of the self-regulatory organizations) are sufficient to protect bank and brokerage customers, but may not be sufficient to protect custodial accounts of advisory clients?

C. Delivery of Account Statements and Notice to Clients

The Commission proposes to amend rule 206(4)–2 to require registered advisers with custody of client funds or securities to have a reasonable basis for believing that the qualified custodian sends an account statement, at least quarterly, to each client for which the qualified custodian maintains funds or securities.[55] The amendment would eliminate the alternative, currently provided in the rule, under which an adviser can send reports to clients if it undergoes a surprise examination by an independent public accountant at least annually.[56] We permitted the latter alternative delivery option because some advisers did not wish to disclose the names of their clients to custodians to prevent a potential competitor from having access to their lists of clients, or to protect the privacy of some well-known clients.[57]

We are proposing to eliminate the alternative delivery option and require all advisers with custody of client assets to have a reasonable belief that the qualified custodian delivers account statements to advisory clients or their representatives (and not through the investment adviser).[58] We believe that direct delivery will provide greater assurance of the integrity of those account statements, which we now believe, in light of recent frauds, is of substantially greater value than the concerns that led us in 2003 to accommodate those advisers that wished not to share client names with custodians.[59] The confidentiality concern, we believe, could also be addressed in custodial contracts or agreements outside of the contract that would restrict the custodian's use of the information.[60]

We are also proposing to amend rule 206(4)–2 to state that advisers relying on the qualified custodian to send account statements directly to clients must form their reasonable belief that such account statements are sent after ''due inquiry.'' Because the effectiveness of the rule depends significantly on direct delivery of account statements by the qualified custodian, we are making it explicit that the adviser is obligated under the rule to conduct some inquiry to form a reasonable belief.[61]

We request comment on these proposed changes to the rule. Should we eliminate the alternative delivery option in rule 206(4)–2? We understand that most advisers do not currently take advantage of the alternative delivery option, and that this proposal will not have a significant effect on a substantial number of advisers or clients.[62] We request comment on our understanding. Are there securities for which a qualified custodian would not send account statements? If so, is this due to legal, tax, or practical limitations? Are there other alternatives that would provide greater assurance of the integrity of client account statements? Should we include the due inquiry requirement in the rule? Should we instead specify particular steps an adviser must take to seek to determine that the qualified custodian sends account statements directly to clients?

We also propose to revise the content of the notice advisers are currently required to send to clients upon opening a custodial account on their behalf. Specifically, we propose to require advisers to include a statement in the notice urging clients to compare the account statements they receive from the custodian with those they receive from the adviser.[63] Client review of periodic account statements from the qualified custodian can enable clients to discover improper account transactions or other fraudulent activity. Raising client awareness of this safeguard at account opening could enhance its effectiveness. We request comment on this notice requirement. Advisers are not required by the Advisers Act or rules to send their own account statements to clients. Should we require advisers that have custody and elect to send account statements to include a legend urging clients to compare the information the adviser sends to clients with the information reflected in the qualified custodian's account statements? Should we require all advisers that have custody to deliver account statements and include such a legend? If so, should we provide specific language for the legend? Are there other disclosure requirements we should consider?

D. Liquidation Audit

We are proposing an amendment to clarify the provision of the rule that exempts advisers from the account statement provisions with respect to those limited partnerships or other pooled investment vehicles that are subject to an annual audit and that distribute financial statements to investors. The proposed amendment would clarify the availability of the annual audit exception to pooled

[55] Proposed rule 206(4)–2(a)(3). An adviser to a limited partnership or other pooled investment vehicle that is subject to an annual audit and that distributes its financial statements to investors would remain excepted from the account statement delivery requirement with respect to assets held by the pool. Proposed rule 206(4)–2(b)(3).

[56] Rule 206(4)–2(a)(3)(ii).

[57] *See* 2002 Proposing Release at Section II.C. *See also* 2003 Adopting Release at Section II.C. (recognizing that certain advisers had presented reasons for allowing a direct delivery exception, and citing Section II.C. of the 2002 Proposing Release).

[58] An ''independent representative'' is a person that (i) acts as agent for an advisory client and by law or contract is obligated to act in the best interest of the advisory client; (ii) does not control, is not controlled by, and is not under common control with the adviser; and (iii) does not have, and has not had within the past two years a material business relationship with the adviser. Rule 206(4)–2(c)(2) [unchanged as proposed rule 206(4)–2(c)(4)].

[59] *See* Section II.C. of the 2003 Adopting Release. Qualified custodians may use service providers to deliver their account statements. The rule does not prohibit this practice, so long as the statements are sent to the client directly and not through the adviser. *See* 2003 Adopting Release at n.30.

[60] We also note that with respect to individual clients who obtain custodial services for their personal, family or household purposes, a U.S. qualified custodian would be subject to the limitations on information sharing in the privacy rules adopted pursuant to Title V of the Gramm-Leach-Bliley Act. *See, e.g.*, 12 CFR Parts 40, 216, 332, 573 (privacy rules adopted by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration); 17 CFR Parts 160, 248 (privacy rules adopted by the Commodity Futures Trading Commission and the SEC). Under these privacy rules, a qualified custodian would be prohibited from sharing the advisory client's personal information with nonaffiliated third parties (other than under an exception) unless the custodian first provides the client with a notice explaining its information sharing practices and the opportunity to opt out of the information sharing and the client does not opt out. *See, e.g.*, 17 CFR 248.10(a)(1).

[61] There are a number of ways advisers could satisfy the ''due inquiry'' requirement. For example, in the 2003 Adopting Release, we explained that an adviser could form this reasonable belief if the qualified custodian provides the adviser with a copy of the account statement that was delivered to the client. *See* the 2003 Adopting Release at n. 29. The receipt of these statements would satisfy the ''due inquiry'' requirement. As another example, an adviser could satisfy the due inquiry requirement if the qualified custodian confirms in writing, including sending a fax or an e-mail to the adviser, that it has sent account statements to the adviser's clients; such confirmation would need to cover each quarter during which the qualified custodian is expected to send account statements to the clients.

[62] Based on the number of Form ADV–Es filed with us during 2008, we estimate 190 advisers relied on the exception.

[63] Proposed rule 206(4)–2(a)(2).

investment vehicles that liquidate and make final distributions other than at year end.[64] This amendment is designed to assure that the proceeds of the liquidation are appropriately accounted for so that investors can take timely steps to protect their rights. Do commenters agree with us that this clarification would provide additional protection to the investors in the pool? Are there alternatives to a liquidation audit that we should consider that would also protect pool investors?

E. Amendments to Form ADV

We are proposing several amendments to Part 1A and Schedule D of Form ADV. The amendments are designed to provide more complete information about the custody practices of advisers registered with the Commission, and to provide us with additional data to improve our ability to identify compliance risks.

Item 7. Item 7 of Part 1A requires advisers to report certain financial industry affiliations, including whether the adviser has a related person that is an investment adviser or a broker-dealer. The item *requires* an adviser to identify on Schedule D of Form ADV each related person that is an investment adviser, and *permits* advisers to report the names of related person broker-dealers. We propose to modify Item 7 to require an adviser to report all related persons who are broker-dealers and to identify which, if any, serve as qualified custodians with respect to the adviser's clients' funds or securities.[65]

Item 9. Item 9 of Part 1A requires advisers to report to us whether they or a related person have custody of client funds or securities. We propose to amend the item to require advisers that have custody (or whose related persons have custody) of client funds or securities to provide additional information about their custodial practices under rule 206(4)–2.

Specifically, we propose to amend Item 9 of Part 1A to require an adviser to report the amount in U.S. dollars of client assets and number of clients of which it or its related person has custody,[66] and whether it or its related person serves as qualified custodian with respect to the adviser's clients' funds or securities.[67] We would also add a new subsection that would require an adviser with custody to report (i) whether a qualified custodian sends quarterly account statements to investors in pooled investment vehicles the adviser manages, (ii) whether the financial statements of the pooled investment vehicles the adviser manages are audited, (iii) whether the adviser's clients' funds or securities are subject to a surprise examination, and (iv) whether an independent public accountant registered with, and subject to regular inspection by, the PCAOB prepares an internal control report with respect to the adviser or its related persons' custodial services when acting as a qualified custodian for advisory client funds or securities.[68] We also propose to amend Item 9 to require advisers that are subject to the surprise examination to report the month in which the last examination commenced.[69] Last, we propose to amend Form ADV: General Instruction number 4 to make conforming changes to reflect that certain of the proposed questions are only required to be updated in an adviser's annual amendment. The information we propose to collect would improve our ability to monitor compliance with the custody rule.

We also propose to amend Schedule D of Form ADV by adding items to require additional details relevant to an adviser's response to the proposed amendments to Item 9 discussed above. With respect to accountants, these amendments would require advisers to: (i) Identify the accountants that perform audits or surprise examinations and that prepare internal control reports; (ii) provide information about the accountants, including address and PCAOB registration and inspection status; (iii) indicate the type of engagement (audit, surprise examination, internal control report); and (iv) indicate whether the accountant's report was unqualified.[70] With respect to qualified custodians, these amendments would require advisers to identify any related person that serves as a qualified custodian for its clients by reporting the related person's name and address, and indicate whether the related person qualified custodian is a bank, futures commission merchant or foreign financial institution.[71] This information would allow our staff to better monitor compliance with the requirements of rule 206(4)–2, and, together with other data reported on Form ADV, would allow our staff to better assess the compliance risks of an adviser.[72]

We request comment on the amended items. We understand that the additional information we would require is readily available to investment advisers and should not be burdensome to provide. Is our understanding correct? Are the new questions clear? If not, what changes should we make to make them clearer? We do not believe that the information we propose to require is proprietary information the disclosure of which would have adverse consequences to the adviser or its clients. Are we correct in this belief?

F. Amendments to Form ADV–E

We are proposing three amendments to the instructions to Form ADV–E. First, we propose to amend the instructions to require that the form and the accountant's examination certificate that accompanies it be filed electronically with the Commission.[73] Second, we propose to amend the instructions to reflect the proposed requirement that Form ADV–E and the examination certificate must be filed within 120 days of the time chosen by the accountant for the surprise examination.[74] Third, we propose to add an instruction that would implement the proposed rule change regarding the accountant's obligation under the written agreement with the adviser to file Form ADV–E accompanied by the termination statement, described above, within four business days of the accountant's resignation, dismissal, or removal. We request comment on these proposed

[64] Proposed rule 206(4)–2(b)(3)(ii).

[65] Proposed Section 7.A. of Schedule D of Form ADV.

[66] Proposed Item 9.A.(2) and B(2) of Part 1A of Form ADV. This information would only be required to be updated when the adviser prepares its annual updating amendment.

[67] Proposed Item 9.D. of Part 1A of Form ADV.

[68] Proposed Item 9.C. of Part 1A of Form ADV.

[69] Proposed Item 9.E. of Part 1A of Form ADV. This information would only be required to be updated when the adviser prepares its annual updating amendment.

[70] Proposed Section 9.C. of Schedule D of Form ADV.

[71] Proposed Section 9.D. of Schedule D of Form ADV. Proposed Item 7 of Form ADV and Section 7.A. of Schedule D of Form ADV would require advisers to report the same information for an affiliated broker-dealer that is a qualified custodian for the adviser. *See supra* note 65 and accompanying text.

[72] These proposed revisions respond in part to concerns raised by the Government Accountability Office in its August 2007 report on our examination program, which concluded that our examination staff should continue to assess and refine the risk algorithm to enhance the risk assessment process, which would include the identification and collection of additional data through Form ADV. *See* United States Government Accountability Office, *Securities and Exchange Commission; Steps Being Taken to Make Examination Program More Risk-Based and Transparent* (August 2007), available at *http://www.gao.gov/new.items/d071053.pdf.*

[73] Currently accountants submit Form ADV–E and the attached examination certificates to the Commission by mail. Electronic filing of Form ADV–E would be through the IARD system and would begin only when the system is upgraded for this function.

[74] Proposed rule 206(4)–2(a)(4).

amendments. Are there additional changes to Form ADV–E that we should consider?

G. Required Records

We also are proposing to amend rule 204–2 to require the adviser to maintain a copy of the internal control report that an adviser would be required to obtain or receive from its related person, pursuant to proposed rule 206(4)–2(a)(6) for five years from the end of the fiscal year in which the internal control report is finalized. Requiring an adviser to retain a copy of the internal control report would provide our examiners with important information about the safeguards in place at an adviser or related person that maintains client assets. Information from these reports would also assist our staff in assessing custody-related risks at a particular adviser. We request comment on this proposal. Is there any additional documentation relating to the internal control report that should be maintained under rule 204–2?

III. General Request for Comment

The Commission requests comment on the rule amendments proposed in this Release, suggestions for additional changes to the existing rules and comment on other matters that might have an effect on the proposals contained in this Release. Commenters should provide empirical data to support their views.

IV. Paperwork Reduction Act

The proposed amendments contain several ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995,[75] and the Commission has submitted the amendments to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are ''Rule 206(4)–2, Custody of Funds or Securities of Clients by Investment Advisers,'' ''Form ADV,'' and ''Form ADV–E, cover sheet for each certificate of accounting of client securities and funds in the custody of an investment adviser,'' under the Advisers Act. The rule and the forms contain currently approved collection of information numbers under OMB control numbers 3235–0241, 3235–0049, and 3235–0361, respectively. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[75] 44 U.S.C. 3501 to 3520.

The collections of information under rule 206(4)–2 are necessary to ensure that clients' funds and securities in the custody of advisers are safeguarded, and information contained in the collections is used by staff of the Commission in its enforcement, regulatory, and examination programs. The respondents are investment advisers registered with us that have custody of clients' funds or securities. The collections of information under Form ADV are necessary for use by staff of the Commission in its examination and oversight program, and some advisory clients also may find them useful. The respondents are investment advisers seeking to register with the Commission or to update their registrations. The collections of information under Form ADV–E are necessary for use by staff of the Commission in its examination and oversight program. The respondents are investment advisers registered with us that have custody of client assets and are subject to an annual surprise examination requirement under rule 206(4)–2. With the exception of an accountant's notification of any material discrepancies identified in a surprise examination, responses provided to the Commission are not kept confidential.

A. Rule 206(4)–2

Currently approved burdens. The current annual collection of information burden approved by OMB for rule 206(4)–2 is 415,303 hours. Rule 206(4)–2 currently requires each registered investment adviser that has custody of client funds or securities to maintain those client assets with a qualified custodian. The rule also requires that an adviser with custody of client assets send quarterly account statements to its clients and undergo an annual surprise examination unless the adviser has a reasonable belief that the qualified custodian sends account statements directly to its clients at least quarterly. In the case of an adviser to a pooled investment vehicle, the adviser does not have to obtain an annual surprise examination and deliver account statements to investors if the pooled investment vehicle is audited at least annually by an independent public accountant and distributes its audited financials to investors in the pool within 120 days of the end of the pool's fiscal year.

The current approved annual burden relating to the requirement to obtain a surprise examination and the delivery of quarterly account statements by the adviser is 21,803 hours. We estimated that 204 advisers were subject to the two requirements. We estimated that each adviser had 670 clients on average and that 193 of the 204 advisers were subject to the two requirements only with respect to 1 percent of their clients and the remainder (11 advisers) were subject to the two requirements with respect to 100 percent of their clients. We further estimated that each adviser would spend 2.5 hours per client in connection with delivering quarterly account statements to clients and undergoing an annual surprise examination pursuant to the rule.

Annual surprise examination. The proposed amendments would eliminate the option for an adviser that has custody of client assets to choose not to have a qualified custodian deliver quarterly account statements directly to clients if the adviser arranges for an annual surprise examination verifying client assets. The proposed rule also would reinstate the requirement for an annual surprise examination for (i) advisers with custody that currently rely on qualified custodians to send account statements directly to advisory clients, (ii) advisers that custody client assets themselves as qualified custodians or advisers with client assets held at a qualified custodian that is a related person,[76] and (iii) advisers to audited pooled investment vehicles. Thus the proposed rule would require all advisers that have custody of client funds or securities to be subject to an annual surprise examination. The proposed amendments are designed to enhance protections afforded to advisory clients by the custody rule. We estimate that 9,575 out of the 11,272 advisers registered with the Commission fall into this category.[77]

[76] The proposed amended rule would deem an adviser to have custody if its related persons have custody of its client assets in connection with the adviser's advisory services. Proposed rule 206(4)–2(c)(2). A related person would be defined as a person directly or indirectly controlling or controlled by the adviser, and any person under common control with the adviser. Proposed rule 206(4)–2(c)(6). The proposed amended rule would require that the surprise examination be performed by an independent public accountant registered with, and subject to regular inspection by, the PCAOB when an adviser or a related person serves as a qualified custodian for the adviser's clients.

[77] Based on information filed through the IARD as of February 2009. The 9,575 advisers include both advisers that have custody of their client assets and advisers whose related persons have custody of the adviser's client assets (including advisers that answered ''yes'' to Item 9.A. or B. of Part 1A of Form ADV). The number also includes those advisers that have discretionary authority over client accounts, which we understand predominantly reflects arrangements with clients to withdraw fees from client accounts. The 9,575 advisers, however, do not include 42 advisers that provide advisory services exclusively to registered investment companies (advisers that checked only (4) under Item 5.D). Under rule 206(4)–2(b)(4) and proposed rule 206(4)–2(b)(4), advisers are not, and would not be, subject to the custody rule with

Continued

We have categorized the estimated 9,575 advisers that report that they have custody of client assets into 4 subgroups for purposes of estimating the collection of information burden. First, we estimate that 7,126 of the 9,575 advisers do not have pooled investment vehicles as their clients.[78] Based on our records and staff's examination experiences, we estimate that these advisers would be subject to surprise examinations with respect to 85 percent of their client accounts (or 928 clients per adviser).[79] A second group of advisers that have custody, totaling 372, are also broker-dealers, banks or futures commission merchants,[80] or have a related person that serves as a qualified custodian for advisory clients' funds or securities.[81] We estimate that these advisers would be subject to an annual surprise examination with respect to 100 percent of their clients (or 1,092 clients per adviser) based on the assumption that all of their clients maintain custodial accounts with the adviser or related person. A third group of advisers, totaling 1,281,[82] advise both pooled investment vehicles and other clients, and would be subject to the surprise examination with respect to 85 percent of their non-pooled investment vehicle clients (or 928 clients per adviser)[83] and 100 percent of their pooled investment vehicle clients (or 2 funds with 100 investors per adviser).[84] A fourth group of advisers, totaling 796,[85] provide advice exclusively to pooled investment vehicles and would be subject to the surprise examination with respect to 100 percent of their pooled investment vehicle clients (or 5 funds and 250 investors per adviser).[86] We estimate that each adviser would spend an average of 0.02 hours for each client that is not a pooled investment vehicle to create a client contact list for the independent public accountant. We further estimate that the advisers to pooled investment vehicles would spend 1 hour for the pool and 0.02 hours for each investor in the pool to create a contact list for the independent public accountant. These estimates would bring the total annual aggregate burden in connection with the surprise examination to 177,242 hours.[87] This does not nclude the collection of information discussed below, relating to the written agreement required by paragraph (a)(4) of the custody rule, as proposed to be amended.

Written agreement with accountant. Requiring the agreement with the independent public accountant that performs the surprise examination to be in writing and to specify certain duties to be performed by the accountant should not significantly increase the paperwork burden on advisers. We believe that written agreements are commonplace and reflect industry practice when a person retains the services of a professional such as an accountant, and they are typically prepared by the accountant in advance. We therefore estimate that each adviser would spend 0.25 hour to add the required provisions to the written agreement, with an aggregate of 2,394 hours for all advisers subject to surprise examinations.[88] Therefore the total annual burden in connection with the surprise examination would be 179,636 hours under the proposed amendments.[89]

Exception for audited pooled investment vehicles. The rule currently excepts, and the proposed rule would continue to except, advisers to pooled investment vehicles from having a qualified custodian send quarterly account statements to the investors in a pool if it is audited annually by an independent public accountant and the audited financial statements are distributed to the investors in the pool. The currently approved annual burden in connection with the required distribution of audited financial statements is 393,500 hours.[90] According to data we obtained from the IARD, 2,112 advisers with custody of client assets provided advice to pooled investment vehicles as of February 2009.[91] Of these 2,112 advisers, we estimate that 796 advisers would each on average provide advice to five pooled

respect to a client that is a registered investment company.

[78] Based on the number of advisers that answered ''yes'' to Item 9.A. or B. of Part 1A of Form ADV (having custody) and checked ''none'' under Item 5.D.(6) (clients that are pooled investment vehicles) as of February 2009, excluding 42 advisers that provide advisory services only to registered investment companies (see supra note 77), and those advisers that are also registered broker-dealers, banks or futures commission merchants or have a related person broker-dealer, bank or futures commission merchant that serves as qualified custodian, which are accounted for separately in the second group. *See infra* notes 80 and 81 and accompanying text.

[79] Based on data collected from the IARD (Item 5.F.(2)(d) and (e) of Form ADV), we estimate that on average 85 percent of the client accounts managed by these advisers are discretionary accounts and the remaining 15 percent are non-discretionary accounts. We believe that advisers have custody due to withdrawal of fees only with respect to the discretionary accounts that they manage.

We estimate that each adviser has, on average, 1,092 clients. This average is based on advisers' responses to Item 5.C. of Part 1A of Form ADV as of November 2008, excluding the two advisers that reported the largest number of clients. Those advisers account for over 51 percent of all advisory clients of SEC registrants and not excluding them would raise the average client count to 2,265 clients. These two firms provide advisory services primarily over the Internet and we believe that it is appropriate to exclude these firms from our calculations.

[80] There are 139 of these investment advisers based on the number of advisers that answered ''yes'' to Item 9.A. of Part 1A of Form ADV (having custody) and checked Item 6.A.(1), (3), or (6) (indicating that the adviser is also a broker-dealer, futures commission merchant, commodity pool operator, commodity trading advisor, or bank). We eliminated advisers that are commodity pool operators or commodity trading advisors, by a firm by firm search of the National Futures Association registration database.

[81] We estimate that there are 233 of these investment advisers based on a percentage of the number of advisers that answered ''yes'' to Item 9.B. of Part 1A of Form ADV (related person custody) and checked Item 7.A.(4) or (5) (indicating that the adviser has a related person bank or futures commission merchant), and answered ''yes'' to Item 9.C. of Part 1A of Form ADV that the related person that has custody is a registered broker-dealer.

[82] Based on the number of advisers that answered ''yes'' to Item 9.A. or B. of Part 1A of Form ADV (having custody) and checked Item 5 D.(6) (indicating that they have pooled investment vehicles as clients) as of February 2009, excluding those that checked only (6) under Item 5 D. and those advisers that are also broker-dealers, banks, or futures commission merchants and custody client assets or have a related person broker-dealer, bank or futures commission merchant that serves as qualified custodian, which are accounted for separately in the second group.

[83] *See supra* note 79.

[84] We estimate that each of these advisers would advise, on average, 2 pooled investment vehicles with 50 investors in each of the pools.

[85] Based on the number of advisers that answered ''yes'' to Item 9 A. or B. of Part 1A of (having custody) and checked Item 5 D.(6) only (indicating that all their clients are pooled investment vehicles) as of February 2009 less those advisers that are also broker-dealers, banks, or futures commission merchants and custody client assets or have a related person broker-dealer, bank or futures commission merchant that serves as qualified custodian, which are accounted for separately in the second group.

[86] The number of funds per adviser is estimated based on the information we collected from Item 5 C. of Form ADV filed by advisers that provide advisory services only to pooled investment vehicles (checked only (6) under Item 5 D.) as of February 2009. We found that 77 percent of these advisers had clients in the range of 1–10. We picked the middle point of the range for our estimate. The estimate of 250 investors per adviser is based on the calculation we submitted for the currently approved hour burden.

[87] $(7{,}126 \times 928 \times 0.02) + (372 \times 1092 \times 0.02) + [(1{,}281 \times 928 \times 0.02) + (1{,}281 \times 100 \times 0.02) + (1{,}281 \times 2 \times 1)] + [(796 \times 250 \times 0.02) + (796 \times 5 \times 1)] = 177{,}242$.

[88] $9{,}575 \times 0.25 = 2{,}394$.

[89] $177{,}242 + 2{,}394 = 179{,}636$.

[90] We estimated that 3,148 advisers to pooled investment vehicles were subject to this information collection under the current rule. We further estimated that each adviser had, on average, 250 investors in the funds it advises, and that each adviser spent 0.5 hours per investor annually for delivering audited financial statements to its 250 investors. $3{,}148 \times 250 \times 0.5 = 393{,}500$.

[91] Based on the number of advisers that answered ''yes'' to Item 9 A. or B. of Part 1A of Form ADV (having custody) and checked Item 5 D.(6) (indicating that they have clients that are pooled investment vehicles) as of February 2009.

investment vehicles that have a total of 250 investors.[92] We further estimate that the remaining advisers, 1,316 advisers, would on average each provide advice to two pooled investment vehicles that have a total of 100 investors. The hour burden imposed on the adviser relating to the mailing of the audited financial statements with respect to each investor in the pool should be minimal, and could be included with account statements or other mailings. We overestimated the burden for this delivery requirement in the past,[93] and are now revising it to an estimated 1 minute per investor for mailing audited financial statements. The aggregate annual hour burden in connection with the distribution of audited financial statements would therefore be 5,510 hours.[94]

Under the proposed amendments, the rule would clarify that an adviser to a pooled investment vehicle that is relying on the annual audit exception must have the pool audited and distribute the audited financial statements to the investors in the pool promptly after completion of the audit if the fund liquidates at a time other than its fiscal year-end. Based on an assumption that 5 percent of pooled investment vehicles are liquidated annually at a time other than their fiscal year-end, this amendment would impose an additional burden of 276 hours per year.[95] As a result, the total annual hour burden in connection with the distribution of audited financial statements under the proposed amendments would be 5,786 hours.[96] This represents a decrease of 387,714 hours in our estimated burden.[97] This decrease in burden is primarily due to the reduction in the estimated hour burden regarding the delivery of audited financial statements to each investor and the reduction of the total number of the advisers subject to the requirement from an estimated 3,148 to 2,112.[98]

Notice to clients. Under the proposed amendments, the rule would also require each adviser to add a statement in its notification to clients upon opening a custodial account on their behalf, urging them to compare the account statements from the qualified custodian to those from the adviser if the adviser sends statements to clients. Although the statement requirement is new, it would be placed in a notification that is currently required to be sent to clients at specified times. We believe that the increase in this collection of information burden, if any, would be negligible. We estimate that 3,617 advisers would be subject to this collection of information,[99] and that each adviser would on average open a new custodial account for 5% of its clients per year, either because the adviser has new clients that request that the adviser open an account on their behalf, or because the adviser selects a new custodian and moves its existing clients' accounts to that custodian. We further estimate that the adviser would spend 10 minutes per client drafting and sending the notice. The total hour burden relating to this requirement would be 33,156 hours per year.[100] Based on the analysis above, we estimate that the total hour collection of information burden for advisers subject to rule 206(4)–2, as proposed to be amended, would be 216,184 hours per year.[101]

Annual aggregate cost. The currently approved collection of information for the custody rule includes an aggregate cost estimate of $281,000. We estimated that the accounting fees for 11 advisers that are subject to the surprise examination with respect to 100 percent of their clients would be $8,000 each annually, on average, and 193 advisers would be subject to the surprise examination with respect to only to 1 percent of their clients and therefore have accounting fees of $1,000 annually, on average. Based on the proposed rule changes we now estimate total annual aggregate costs of $170,557,500. The increase in estimated aggregated costs is attributable to an increase in the number of advisers that would be subject to the surprise examination and the requirement that an adviser obtain, or receive from related persons, an internal control report with respect to the description of controls placed in operation relating to custodial services when the adviser or related person serves as qualified custodian for the adviser's clients' funds or securities.

Based on the subcategories of advisers with custody as described above, we now estimate that all 9,575 advisers that would be subject to the surprise examination requirement and pay an accounting fee, on average, of $8,100.[102] The estimated total accounting fees for all surprise examinations would therefore be $77,557,500.[103] This would represent an increase of $77,276,500 in the cost estimate,[104] primarily resulting from an increase in the number of advisers that would be subject to the surprise examination.

If an adviser or a related person serves as a qualified custodian for client funds or securities under the proposed rule in connection with advisory services the adviser provides to clients, the adviser must obtain, or receive from the related person, no less frequently than once each calendar year a written internal control report that provides an opinion from an independent public accountant with respect to the adviser's or related person's controls relating to custody of client assets. We are proposing that the independent public accountant issuing the internal control report be registered with, and subject to regular inspection by, the PCAOB. We estimate that approximately 372 investment advisers would have to obtain, or receive from a related person, an internal control report relating to custodial services, and would have to maintain the report as a required record.[105] We anticipate the cost of maintaining these records will be minimal. Based on discussions with accounting professionals, we understand that the cost to prepare an internal control report relating to custody would vary based on the size and services offered by the qualified custodian, but that on average an internal control report would cost approximately $250,000 per year,[106] for

[92] *See supra* note 90.

[93] We previously estimated that an adviser would spend 0.5 hour per investor sending investors audited financial statements. This estimate incorrectly included time for preparation of the audited financial statements, which after the audit should have been readily available to the adviser for distribution.

[94] [(796 × 250 × 1 minute) + (1,316 × 100 × 1 minute)]/60 = 5,510 hours.

[95] 5,510 × 0.05 = 276.

[96] 5,510 + 276 = 5,786.

[97] 393,500 − 5,786 = 387,714.

[98] *See supra* note 90.

[99] We assume that advisers have custody solely because of deducting fees do not typically open custodial accounts on behalf of their clients. Excluding those advisers we have 3,617 advisers that may be subject to this information collection (advisers that answered ''yes'' to Item 9A. or B. of Part 1A. of Form ADV).

[100] [3,617 × (1,092 × 0.05) × 10 minutes]/60 = (3,617 × 55 (rounded up from 54.60) × 10 minutes)/60 = 33,156 hours.

[101] 177,242 + 5,786 + 33,156 = 216,184.

[102] We believe that the average accounting fee for advisers with 85 percent of client accounts subject to the surprise examination would not be materially different from that for advisers with 100 percent of client accounts subject to the surprise examination. We consulted with a few accounting firms before reaching these estimates, which include the costs of the surprise examination and any filing and reporting obligations the accountant has with respect to the surprise examination. The estimates are consistent with the estimates we made in 2002 and 2003 when last revising rule 206(4)–2. *See* the 2002 Proposing Release, at nn.72 and 73, and Section VI.A of the 2003 Adopting Release. The revised estimate reflects requirements under the proposed rule.

[103] $8,100 × 9,575 = $77,557,500.

[104] $77,557,500 − $281,000 = $77,276,500.

[105] *See infra* note 163 for explanation of our estimate.

[106] We consulted accounting firms that issue these reports to prepare this estimate.

total costs attributable to this element of the proposed rule to be 93,000,000.[107]

B. Form ADV

The currently approved collection of information for all advisers completing and amending Form ADV is 109,678 hours. Based on the proposed amendments, we estimate an increase to this collection of information, to 132,599 hours.[108] The increased burden would result from the shortening of the amortization period currently in use for the approved collection of information, increases to our estimates of the number of advisers and advisory clients, and the proposed amendments to Part 1A and Schedule D of Form ADV.

We are proposing several amendments to Part 1A of Form ADV that are designed to provide us with additional details regarding the custody practices of advisers registered with the Commission, and to provide additional data to assist in our risk-based examination program. The proposed amendments would revise Item 7 of Form ADV, under which advisers report certain financial industry affiliates, to require an adviser to report all related persons who are broker-dealers and to identify which, if any, serve as qualified custodians with respect to the advisers' client assets.[109] We also propose to amend Item 9 to require advisers that have custody (or whose related persons have custody) of client assets to provide additional information about their custodial practices under proposed rule 206(4)–2. In addition, the proposed amendments to Schedule D of Form ADV would require an adviser, depending on the adviser's response to Item 9, to provide additional details including information about the accountants that perform annual audits or surprise examinations or that prepare internal control reports,[110] whether a report prepared by an independent public accountant contains an unqualified opinion,[111] and information about any related person that serves as a qualified custodian for the adviser's clients.[112]

Investment advisers should already have the information that we would require them to report on Form ADV, so the increased collection of information burden should not be significant. We estimate that these amendments would increase the average collection of information burden for the initial application and annual amendment of Form ADV from the currently approved 22.25 hours per adviser to 22.50 hours per adviser. We also estimate that there would be 12,272 advisers subject to this information collection.[113] The total annual burden for initial filing and annual amendments would therefore be 276,120.[114] For the currently approved hour burden, the Commission staff chose a fifteen-year amortization, however, for purposes of our proposal, we are amortizing the estimated burden over a shorter period of time—three years.[115] Therefore the annual burden, after amortizing it over the three year period, would be 92,040 hours or 7.5 hours per adviser.[116]

In addition to the burden associated with the initial filing and annual amendments to Form ADV, we estimated for the currently approved collection of information that, on average, each adviser filing Form ADV through the IARD system would likely amend its form 1.5 times during the year.[117] We estimated that the collection of information burden for such amendments would be 0.75 hours per amendment. We believe our proposal would not increase the hour burden per adviser in connection with such amendments. The total hour burden in connection with such amendments would therefore be 13,806 hours.[118] Adding the annual burden of 26,753 hours associated with the requirement of delivering to clients the advisers' code of ethics upon clients' request,[119] the total annual hour burden for Form ADV under the proposed amendments would be 132,599 hours.[120] This represents an increase of 22,921 hours from the currently approved annual hour burden, primarily due to the shortening of the amortization period from 15 year to three years, the increase in our estimates of the numbers of advisers and advisory clients, and the proposed amendments to Part 1A of Form ADV.[121]

C. Form ADV–E

The currently approved collection of information for Form ADV–E is 12 hours. We estimate that this collection of information would increase to 575 hours based on the proposed rule amendments. This increase results primarily from an increase in the estimated number of advisers that would be subject to the requirement of completing Form ADV–E under the proposed amendments to rule 206(4)–2 and the additional collections of information proposed by the amendments to the rule.

For the currently approved annual hour burden for Form ADV–E, we estimated that there would be 231 advisers subject to the annual surprise examination requirement, including the requirement to complete Form ADV–E, and that each of the advisers would spend approximately 0.05 hour to complete Form ADV–E.[122] We now estimate that there would be 9,575 advisers required to undergo an annual surprise examination and complete Form ADV–E, and that the total annual hour burden for Form ADV–E in connection with the surprise examination requirement would thus be increased to 479 hours.[123]

In addition, under the proposed amendments, rule 206(4)–2 would require an adviser subject to the surprise examination to enter into a written agreement with the independent public accountant that specifies the

[107] $250,000 × 372 = $93,000,000. *See infra* notes 165–166 and accompanying text for additional discussion on this estimate.

[108] This number also includes a burden of 26,753 hours associated with the requirement of delivering to clients copies of the adviser's code of ethics upon clients' request. The currently approved hour burden associated with this requirement is 78,973 hours, based on the estimates that there were 11,787 advisers subject to this burden (10,787 currently registered advisers + 1,000 new advisers). We estimated that each adviser had 670 clients and that 10 percent of those clients would request the adviser's code of ethics. We further estimated that satisfying each delivery request would impose a burden of 0.10 hour. (10,787 + 1,000) × (670 × 0.10) x 0.10 = 78,973.

We now estimate that 12,272 advisers (11,272 currently registered advisers + 1,000 new advisers) are subject to this burden and that each adviser has 1,092 clients. *See supra* note 79 for calculation of average client number. We further estimate that 10 percent of the clients would request their adviser's code of ethics and that satisfying each delivery request would impose a burden of 0.02 hour. The total burden under the new estimates would be 26,753 hours. (11,272 currently registered advisers + 1,000 new advisers) × (1,092 clients × 0.10) × 0.02 hours = 12,272 × 109 × 0.02 = 26,753 hours.

[109] Proposed Section 7 A. of Schedule D of Form ADV.

[110] Proposed Section 9 C. of Schedule D of Form ADV.

[111] *Id.*

[112] Proposed Section 9 D. of Schedule D of Form ADV.

[113] Based on the information collected from the IARD as of February 2009, 11,272 advisers were registered with us. In addition, based on historical data of the IARD, we estimate that there are approximately 1,000 new applicants for registration with the Commission each year. 11,272 + 1,000 = 12,272.

[114] 22.5 × 12,272 = 276,120.

[115] Every three years, we must submit for approval by the OMB collections of information imposed by our rules and thus the three-year period reflects the effective period of OMB's approval of this collection of information.

[116] 276,120 / 3 = 92,040; 92,040 / 12,272 = 7.5.

[117] In addition to the required annual update of their Form ADV, advisers must amend their Form ADV by filing additional amendments promptly if information they provided in response to certain items of Form ADV becomes inaccurate in any way. *See* General Instructions to Form ADV.

[118] 12,272 × 1.5 × 0.75 = 13,806.

[119] *See supra* note 108.

[120] 92,040 + 13,806 + 26,753 = 132,599 hours.

[121] 132,599 − 109,678 = 22,921 hours.

[122] 231 × 0.05 = 11.55 hours.

[123] 9,575 × 0.05 = 479.

accountant's duties, including filing Form ADV–E upon the termination of its engagement. Based on an assumption that advisers change their independent public accountants every five years on average, 1,915 advisers would, under our proposal, be required each year to complete Form ADV–E with respect to an accountant's termination.[124] The total annual hour burden in connection with this proposal would be 96 hours,[125] and the total annual hour burden for advisers to complete Form ADV–E in connection with the surprise examination and the termination statement would be 575 hours.[126]

D. Request for Comment

We request comment whether these estimates are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

- Evaluate 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;
- Evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, Washington, DC 20503, and also should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090 with reference to File No. S7–09–09. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives the comment within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–09–09, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street, NE., Washington, DC 20549–0213.

V. Cost-Benefit Analysis

A. Background

The Commission is sensitive to the costs and benefits resulting from its rules. Rule 206(4)–2, the custody rule, seeks to protect clients' funds and securities in the custody of registered advisers from misuse or misappropriation by requiring advisers to maintain their clients' assets with a qualified custodian, such as a broker-dealer or a bank.[127] Advisers may comply with the current custody rule by either having the qualified custodian send account statements directly to their clients at least quarterly or by sending their own quarterly account statements to their clients and undergoing an annual surprise examination.[128]

The rule, as proposed to be amended, would retain the requirement that advisers maintain clients' assets with a qualified custodian, but would require all registered advisers that have custody of client assets to have a reasonable belief after due inquiry that the qualified custodian sends an account statement directly to each client or its representative for which the qualified custodian maintains assets.[129] The proposed rule would also require all advisers that have custody of client assets to undergo an annual surprise examination.[130] In addition, we propose to amend the rule to provide that an adviser has custody if any of its related persons has custody of the adviser's client assets in connection with the adviser's advisory services.[131] In situations where an adviser or a related person serves as a qualified custodian for client funds or securities under the proposed rule in connection with advisory services the adviser provides to clients, the adviser must obtain, or receive from the related person, no less frequently than once each calendar year a written internal control report that provides an opinion from an independent public accountant with respect to the adviser's or related person's controls relating to custody of client assets.[132] We are proposing that the independent public accountant issuing the internal control report be registered with, and subject to regular inspection by, the PCAOB.[133] We also are proposing to require that when an adviser or a related person serves as a qualified custodian for the adviser's clients' funds or securities, the surprise examination would have to be performed by an independent public accountant registered with, and subject to regular inspection by, the PCAOB.[134]

These proposed amendments are designed to improve the safekeeping of advisory client assets. We have identified, below, certain costs and benefits that may result from the proposed rule amendments. We request comment on the costs and benefits of the proposed rule amendments, and encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

B. Benefits

Improved protection for advisory clients. We have designed the proposed amended rule to provide greater protection for advisory clients' assets. The potential benefits to investors, however, are difficult to quantify. The proposed rule would require all registered advisers with custody of client assets to undergo an annual surprise examination by an independent public accountant that would provide ''another set of eyes'' on client assets, and thus additional protection against their misuse. In addition, the independent public accountant may identify mishandling of client assets, which may result in the earlier detection of fraudulent activities and reduce resulting client losses. We estimate that the rule, if amended to make this change, would require 9,575 advisers to obtain an annual surprise examination with respect to 8,214,462 clients' accounts.[135]

[124] 9,57 5/5 = 1,915.

[125] 1,915 × 0.05 = 96.

[126] 479 + 96 = 575.

[127] Under rule 206(4)–2(c)(3), a qualified custodian means a bank, a savings association, a registered broker-dealer, a registered futures commission merchant, and in certain instances a foreign custodial institution.

[128] Rule 206(4)–2(a)(3)(i) and (ii). In the case of a pooled investment vehicle, the account statements and surprise examination requirements can be satisfied if the pooled investment vehicle is audited at least annually and distributes its audited financial statements to the investors in the pool within 120 days of the end of the pool's fiscal year. Rule 206(4)–2(a)(3)(iii) and (b)(3).

[129] Proposed rule 206(4)–2(a)(3). We would retain the exemption from the account statement delivery requirement, described above in *supra* note 128 for an adviser to a pooled investment vehicle.

[130] Proposed rule 206(4)–2(a)(4).

[131] Proposed rule 206(4)–2(c)(2). Currently, an adviser may, depending on the circumstances, be deemed to have custody of client assets held by an affiliate. *See supra* note 76 and accompanying text.

[132] Proposed rule 206(4)–2(a)(6)(ii).

[133] Proposed rule 206(4)–2(a)(6)(ii)(B).

[134] Proposed Rule 206(4)–2(a)(6)(i).

[135] For purposes of Paperwork Reduction Act analysis, we estimate that there would be 9,575 advisers subject to the surprise examination with respect to 8,214,462 advisory clients' accounts: (i)

Continued

These benefits would also extend to investors in pooled investment vehicles managed by a registered adviser, because the amended rule would require the adviser to obtain an annual surprise examination with respect to those assets. The annual surprise examination would be in addition to any annual audit of the pool (required if the qualified custodian is not sending account statements directly to investors), which is performed at the end of each fiscal year. The surprise examination requirement therefore would provide an additional deterrent to fraudulent activity by advisers that are relying on the audit exception. Based on IARD data, we estimate that 327,100 investors would benefit from the additional protection afforded by the proposal.[136]

Amending the rule to state that advisers have custody if their ''related persons'' hold client assets in connection with advisory services provided by the adviser, would extend the protections of the custody rule to these clients. This amendment to the rule would result in client assets held by the adviser or its related persons becoming subject to a surprise examination performed by an independent public accountant registered with, and subject to regular inspection by, the PCAOB and other requirements of the rule, which may deter fraudulent activity perpetrated by an adviser through its related persons, and provide an independent check on the adviser's ability to convert client assets to its own use.

The proposed rule would require an adviser to obtain, or receive from a related person, no less frequently than once each calendar year a written internal control report from an independent public accountant registered with, and subject to regular inspection by, the PCAOB with respect to controls relating to custody when the adviser or a related person serves as a qualified custodian for client funds or securities in connection with advisory services the adviser provides to clients. This requirement would provide important safeguards to advisory clients in these higher risk situations. Requiring these advisers to also obtain an internal control report would provide an additional check on the safeguards relating to client assets held at a related person qualified custodian. An internal control report could also significantly strengthen the utility of the surprise examination when the adviser or a related person custodian maintains client assets because the independent public accountant performing the surprise examination could obtain additional comfort that confirmations received from the qualified custodian in the course of the surprise examination are reliable and, where a broker-dealer is the qualified custodian, may be able to leverage existing tests performed in compliance with broker-dealer auditing and internal control requirements. The internal control report may also reveal control problems, which could be significant.[137] Thus, the requirement to obtain an internal control report informs the surprise examination process and may itself act as a deterrent to advisers that may consider misappropriating client assets directly or through a related person in the guise of providing custodial services as a qualified custodian. We also propose to require advisers to maintain the internal control report as a required record to provide our staff access to the accountant's report. Based on IARD data, we estimate clients of 372 advisers would benefit from the protections provided by the internal control report requirement.[138]

The proposed amendments would eliminate the alternative, currently provided in the rule, under which an adviser with custody can send its own account statements to clients if the adviser is subject to an annual surprise examination. Instead, all advisers with custody would be required to have a reasonable belief, after due inquiry, that the qualified custodian sends account statements directly to clients. As a result, we expect that clients of approximately 190 advisory firms that currently send their own account statements to clients would, under the proposed amendments, receive account statements directly from qualified custodians.[139] This change would provide clients confidence that any erroneous or unauthorized transactions would be reflected and, as a result, deter advisers from fraudulent activities. Based on IARD data, we estimate that 176,320 clients would benefit from this proposal and would receive account statements directly from qualified custodians.[140]

As proposed to be amended, the rule would require each adviser that is required to undergo an annual surprise examination to enter into a written agreement with an independent public accountant to perform the surprise examination. The written agreement would require the independent public accountant to, among other things, (i) file Form ADV–E accompanied by a certificate within 120 days of the time chosen by the accountant for the surprise examination stating that it has examined the client assets and describing the nature and extent of the examination, (ii) report to the Commission any material discrepancies discovered in the examination within one business day, and (iii) upon the accountant's termination of engagement, file Form ADV–E within 4 business days accompanied by a statement explaining the reasons for such termination if related to examination scope or procedure. These filings and reports would provide our staff additional information to prioritize examinations and would assist in establishing advisers' risk profiles. As proposed, the rule would result in the electronic filing of Form ADV–E and the accountant statement on the Internet-based IARD system. Clients would benefit from electronic filing of the Form ADV–E because it would allow them to easily access important information about the surprise examinations performed on their advisers. We estimate that 8,214,462 advisory clients and 327,100

928 clients for each of the 7,126 advisers that would have non-pool clients only, (ii) 1,092 clients for each of the 372 advisers that are themselves qualified custodians, (iii) 930 clients (928 individual clients and 2 fund clients) for each of the 1,281 advisers that provide advice to both individual clients and pooled investment vehicles; and (iv) 5 fund clients for each of the 796 advisers that provide advice to pooled investment vehicles only. *See supra* notes 77–86 and accompanying text.

[136] As stated above in supra notes 77–86 and accompanying text, for purposes of the Paperwork Reduction Act analysis, we estimated that 1,281 advisers that provide advice to both individual clients and pooled investment vehicles would each be subject to the surprise examination with respect to two pooled investment vehicles with 50 investors in each pool and 796 advisers that provide advice exclusively to pooled investment vehicles would be subject to the surprise examination with respect to five pooled investment vehicles with 50 investors in each pool. [(1,281 × 100) + (796 × 250) = 327,100].

[137] In addition to the specific procedures an independent public accountant must follow during a surprise examination, the accountant should perform any additional audit procedures deemed necessary under the circumstances. *See Nature of Examination Required to be Made of All Funds and Securities Held in Custody of Investment Advisers and Related Accountant's Certificate, supra* note 8.

[138] We estimate that 139 investment advisers that are also banks, registered broker-dealers or futures commission merchants would custody client assets as a qualified custodian under the rule. Based on IARD data, we also estimate that 233 investment advisers have a related person bank, registered broker-dealer or futures commission merchant that is a qualified custodian for advisory client assets. 139 + 233 = 372.

[139] Based on ADV–E filings, there were 190 advisers that underwent surprise examinations during 2008.

[140] We estimate that approximately 190 advisers would be subject to the surprise examination with respect to 928 clients each under the current custody rule. The proposed elimination of the option for advisers to send account statements would result in approximately 176,320 clients receiving account statements directly from the qualified custodian. (190 × 928 = 176,320).

investors in pooled investment vehicles would benefit from the proposed change.[141] Furthermore, the availability to the general public of Form ADV–E information on the Commission's Web site may result in additional benefits, including to potential clients deciding which investment adviser to select.

We are proposing to require advisers to include a statement in the notice that they are currently required to send to their clients upon opening a custodial account on their clients' behalf.[142] The statement would urge clients to compare the account statements they receive from the custodian with those they receive from the adviser. As discussed above, client review of periodic account statements from the qualified custodian is an important measure that can enable clients to discover improper account transactions or other fraudulent activity. Raising clients' awareness of this safeguard under the custody rule at account opening could enhance the rule's effectiveness. We estimate that 198,935 clients would receive notices containing this additional information.[143]

Finally, we propose to amend Form ADV in connection with the amendments to the custody rule. We would modify Item 7 of Part 1A under which advisers report certain financial industry affiliates, to require an adviser to report all related persons that are broker-dealers and to identify which, if any, serve as qualified custodians with respect to the adviser's client assets.[144] We also would amend Item 9 to require advisers that have custody (or whose related persons have custody) of client assets to provide additional information about their custodial practices under the custody rule. In addition, the proposed amendments to Schedule D of Form ADV would require an adviser, depending on the adviser's response to Item 9, to provide additional details including information about the accountants that perform annual audits, surprise examinations or that prepare internal control reports,[145] whether a report prepared by an accountant contains an unqualified opinion,[146] and about any related person that serves as a qualified custodian for the adviser's clients.[147] These disclosures would provide our staff more information to determine advisers' risk profiles and prepare for examinations. Moreover, this information would be filed electronically under the proposed amended rule and would be available to the public on the Commission's Web site. Clients would therefore benefit by obtaining more information about their advisers' custodial practices.

Improved clarity of the rule. We anticipate that investment advisers would find it easier to understand and comply with the rule as a result of the proposed amendments, which may result in cost savings for advisers. The proposed amendments would improve the clarity of the rule by adding several definitions, including amending the definition of ''custody'' to address related person custodian situations, and adding definitions of ''control,'' and ''related person.'' [148]

C. Costs

Surprise Examination. As discussed above, the proposed amended rule would require all advisers with custody of client assets to undergo an annual surprise examination. This amendment would result in a new requirement to obtain a surprise examination for (i) advisers with custody that rely on qualified custodians to send account statements directly to advisory clients, (ii) advisers that custody client assets themselves as qualified custodians or advisers with client assets held at a qualified custodian that is a related person,[149] and (iii) advisers to pooled investment vehicles that are subject to an annual audit and deliver the audited financial statements to investors in the pool.[150] Based on the data we collected from Form ADV as of February 2009, we estimate that the proposed amended rule would subject 9,575 advisers to an annual surprise examination.[151] Reducing that number by the 190 advisers that already undergo an annual surprise examination under the current rule,[152] we estimate that the proposed amendments would result in approximately 9,385 additional advisers being required to obtain a surprise examination.[153] For purposes of the Paperwork Reduction Act analysis, we estimate a total annual collection of information burden in connection with the surprise examination of 179,636 hours.[154] Based on this estimate we anticipate that advisers would incur an aggregate cost of approximately $11,783,898 per year for the total hours their employees spend in complying with the surprise examination requirement.[155]

In addition, advisers subject to the surprise examination requirement would incur accounting fees to comply with the requirement. We previously estimated that there were 204 advisers subject to the surprise examination requirement under the current custody rule.[156] Of the 204 advisers, 11 advisers were subject to the surprise examination with respect to 100 percent of their clients and spent $8,000 each annually,

[141] *See supra* notes 135 and 136 and accompanying text for further information.

[142] Rule 206(4)–2(a)(2).

[143] We estimated that approximately 3,617 advisers open accounts on behalf of their clients and each year on average open accounts for about 5% of their 1,092 clients who are either new clients or whose accounts have been transferred to new qualified custodians. (3,617 × (1,092 × 0.05) = 3,617 × 55 (rounded up from 54.60) = 198,935).

[144] Proposed Section 7.A. of Schedule D of Form ADV.

[145] Proposed Section 9.C. of Schedule D of Form ADV.

[146] *Id.*

[147] Proposed Section 9.D of Schedule D of Form ADV.

[148] Rule 206(4)–2(c).

[149] Under the current custody rule, depending on circumstances, an adviser may or may not have custody if a related person has custody of its clients' assets. *See supra* note 76.

[150] We also have proposed to amend the rule to make privately offered securities that investment advisers hold on behalf of their clients subject to the surprise examination requirement. It is unlikely that an adviser would be subject to the surprise examination requirement *solely* based on this rule change, but rather the amendment would subject these positions to the surprise examination requirement.

[151] Based on responses to Item 9.A. or Item 9.B. and Item 5 of Part 1A, Form ADV as of February 2009. We reduced this number by the 42 advisers that provide advisory services exclusively to registered investment companies (advisers that checked only (4) under Item 5 D.). Under rule 206(4)–2(b)(4) and proposed rule 206(4)–2(b)(5), advisers are not subject to the custody rule with respect to the account of a registered investment company.

[152] *See supra* note 139 and 140.

[153] 9,575 − 190 = 9,385.

[154] *See supra* note 89 and accompanying text for further information. We estimate that of the 179,636 hours, 177,242 would be spent on providing clients lists and other information to the independent public accountant performing the examination and 2,394 hours would be spent on adding to the written agreement with the accountant the specified duties the rule would require the accountant perform.

[155] We expect that the function of providing lists of clients and other information to the independent public accountant in assisting its examination, totaling 177,242 hours, would be performed by compliance clerks. Data from the *Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 2.93 to account for bonuses, firm size, employee benefits and overhead, suggest that cost for this position is $63 per hour. We expect that the function of adding certain duties of the accountant to the written agreement with the accountant, totaling 2,394 hours, would be performed by compliance managers. Data from the *Securities Industry and Financial Markets Association's Management & Professional Earnings in the Securities Industry 2008,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that the cost for this position is $258 per hour. Therefore the total costs would be $11,783,898 ((177,242 × $63) + (2,394 × $258)).

[156] We did the estimate in connection with our 2007 application for hour burden approval from the OMB under the Paperwork Reduction Act with respect to information collection required by the current custody rule.

on average, and 193 advisers were subject to the surprise examination with respect to only 1 percent of their clients and spent $1,000 each annually, on average. The total estimated accounting fees were therefore $281,000.[157]

We now estimate that there would be 9,575 advisers subject to the surprise examination and they would each pay, on average, an annual accounting fee of $8,100 for the surprise examination.[158] The estimated total accounting fees for all surprise examinations would therefore be $77,557,500.[159] This represents an increase of $77,276,500 in estimated costs attributable to this rulemaking, resulting primarily from the increase in the estimated number of advisers that would be subject to the surprise examination.[160]

Under the proposed amended rule each adviser that is required to undergo an annual surprise examination must enter into a written agreement with the independent public accountant that performs the surprise examination, specifying certain duties that the accountant would perform under the rule.[161] We believe that the requirement of a written agreement reflects current industry practice and that advisers therefore would have a written agreement with their accountants regardless of whether it is required by the custody rule. Requiring certain additional items to be included in the written agreement would not significantly increase costs for advisers.[162] Moreover, we do not believe that the new requirements placed on the independent public accountant by the written agreement (electronic filing of Form ADV–E and termination statement) would materially increase the accounting fees for the surprise examination discussed above.

Internal Control Report. As discussed above, in situations where an adviser or a related person serves as a qualified custodian for client funds or securities under the proposed rule in connection with advisory services the adviser provides to clients, the adviser must obtain, or receive from the related person, no less frequently than once each calendar year a written internal control report that provides an opinion from an independent public accountant with respect to the adviser's or related person's controls relating to custody of client assets. We are proposing that the independent public accountant issuing the internal control report be registered with, and subject to regular inspection by, the PCAOB. We estimate that approximately 372 investment advisers would have to obtain, or receive from a related person, an internal control report relating to custodial services, and would have to maintain the report as a required record.[163] We anticipate the cost of maintaining these records will be minimal. Based on discussions with accounting professionals, we understand that the cost to prepare an internal control report relating to custody would vary based on the size and services offered by the qualified custodian, but that on average an internal control report would cost approximately $250,000 per year, for total costs attributable to this section of the proposed rule to be $93,000,000.[164]

Our estimated cost of implementing the internal control report requirement is based on information available to us. We believe, however, that actual costs may be lower than estimated because (i) some qualified custodians already obtain an internal control report on their custody practices,[165] (ii) advisers that have more than one related person qualified custodian may concentrate these custody arrangements with a single related person qualified custodian, and (iii) that to the extent advisers have accommodated certain client arrangements that result in a related person maintaining client funds or securities on an infrequent basis, they may discontinue these accommodations.[166]

Liquidation Audit. The proposed amended rule would specifically require an adviser to a pooled investment vehicle that is relying on the annual audit exception to obtain a final audit if the pool is liquidated at a time other than the end of a fiscal year.[167] This clarification would assure that the proceeds of the liquidation are appropriately accounted for. We believe this clarification would not materially increase the costs for advisers to pooled investment vehicles because we believe most of these pooled investment vehicles are subject to contractual obligations with their investors to obtain a liquidation audit.

Due Inquiry. The proposed rule would require all registered advisers that have custody of client assets to have a reasonable belief, after due inquiry, that the qualified custodian sends account statements directly to their clients at least quarterly, with the exception for certain pooled investment vehicles, described above. Most advisers subject to the rule have qualified custodians that deliver account statements directly to clients and already conduct an inquiry of whether the qualified custodian sends account statements to clients, so we believe few advisers would have to change their practices.[168] For those advisers that previously had sent account statements directly to clients instead of having the qualified custodian send account statements to clients, the costs should not be significant because qualified custodians send account statements to clients in their normal course of business. The requirement that advisers form their reasonable belief after due inquiry similarly should not have significant costs, as we understand that today most advisers receive duplicate copies of client account statements from custodians.

Form ADV. As discussed above, we are proposing several amendments to Part 1A of Form ADV that are designed to provide us with additional details regarding the custody practices of advisers registered with the Commission, and to provide additional data to assist in our risk-based examination program. For purposes of the Paperwork Reduction Act analysis, we estimate that these amendments would increase the annual information collection burden in connection with Form ADV from 22.25 hours to 22.50 hours for each adviser.[169] The total

[157] (11 × $8,000) + (193 × $1,000) = $281,000.

[158] *See supra* note 102 and accompanying text.

[159] 9,575 × $8,100 = $77,557,500.

[160] $77,557,500 − $281,000 = $77,276,500.

[161] Proposed rule 206(4)–2(a)(4).

[162] We estimate that it would take each adviser about 0.25 hour to add the required specifications. *See supra* note 88 and accompanying text. Converting the hour burden to costs, each adviser would spend $64.50. *See supra* note 155.

[163] Some advisers may have client assets that are in custody with more than one related person qualified custodian, but a related person qualified custodian also may provide custody services to more than one related person investment adviser. For purposes of this analysis we assume that these alternatives offset one another since those advisers that have more than one related person that is a qualified custodian is likely part of a large financial service provider and the custodian is more likely to be providing custody services to more than one adviser. The same internal control report would satisfy the rule's obligations for related person advisers that use a common related qualified custodian.

[164] $250,000 × 372 = $93,000,000.

[165] For instance, it is our understanding after discussions with several large accounting firms that mutual fund custodians obtain internal control reports to assist funds in meeting their obligations under the Investment Company Act compliance program rule (rule 38a– 1) [17 CFR 270.38a–1].

[166] For instance, an advisory client may be referred to the adviser by a related person broker-dealer that would continue to maintain custody of the client assets even though the adviser is managing the assets.

[167] Proposed rule 206(4)–2(b)(3)(ii).

[168] Filing data indicates that 190 advisers (other than those that have custody but only have pooled investment vehicle clients that are subject to an annual audit) did not have the qualified custodian send account statements directly to their clients; *see supra* notes 139 and 140.

[169] *See supra* notes 113–121 and accompanying text.

information collection burden resulting from the proposed amendments would be 3,068 hours.[170] Based on this estimate we anticipate that advisers would incur an aggregate cost of approximately $193,284 per year for the total hours their employees spend in connection with the proposed provisions of Form ADV.[171]

Form ADV–E. For purposes of the Paperwork Reduction Act analysis, we estimate that the collection of information in connection with Form ADV–E would increase from the currently approved 12 hours to 575 hours based on the proposed rule amendments. This increase results from an increase in the estimated number of advisers that would be subject to the requirement of completing Form ADV–E under the proposed amendments to rule 206(4)–2 and the additional collections of information proposed by the amendments relating to filing Form ADV–E when an independent public accountant performing the surprise examination terminates its engagement. This represents an increase of 563 hours[172] with an estimated aggregated annual cost of approximately $35,469.[173]

D. Request for Comment

- The Commission requests comments on all aspects of the cost-benefit analysis, including the accuracy of the potential costs and benefits identified and assessed in this release, as well as any other costs or benefits that may result from the proposals.
- We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or additional costs and benefits.

VI. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') regarding proposed rule 206(4)–2 in accordance with section 3(a) of the Regulatory Flexibility Act.[174]

A. Reasons for Proposed Action

Rule 206(4)–2, the custody rule, requires registered advisers to maintain their clients' assets with a qualified custodian, such as a broker-dealer or a bank. Advisers may comply with the current custody rule either by having a reasonable belief that the qualified custodian sends periodic account statements directly to the advisory clients or by the adviser sending its own quarterly account statements to its clients and undergoes an annual surprise examination.[175] An adviser to a pooled investment vehicle may comply with the rule by having the pool audited annually by an independent public accountant and distributing the audited financials to the investors in the pool within 120 days of the end of the pool's fiscal year.[176]

To enhance the protections afforded to clients' assets, we are proposing to require *all* registered advisers that have custody of client assets to have a reasonable belief that the qualified custodian that holds advisory client assets sends account statements directly to advisory clients at least quarterly.[177] Under the proposed amendments, the rule would require all advisers having custody of client assets to undergo an annual surprise examination.[178] In addition, the rule would explicitly state that an adviser has custody if any of its related persons has custody of the adviser's client assets in connection with the adviser's advisory services.[179] The rule would also require the adviser and the accountant, under the terms of its agreement with the adviser, to report information to the Commission that would assist the Commission in protecting advisory client assets. Together, these revisions to the rule are designed to strengthen the controls relating to advisers' custody of client assets and deter advisers from fraudulent activities.

B. Objectives and Legal Basis

We have designed the proposed amendments to enhance the protections afforded to clients when their advisers have custody of client assets. The surprise examination requirement of the rule may deter fraudulent activities by advisers. Moreover, an independent public accountant may identify misuse that clients have not, which would result in the earlier detection of fraudulent activities and reduce resulting client losses. The proposed amendments would eliminate the exemption from the requirement of an annual surprise examination provided under the current rule for advisers to audited pooled investment vehicles. Annual surprise examinations of pooled investment vehicles would provide the investors in the pool additional protection. Unlike an annual audit of the pool, which is performed at the end of each fiscal year, the accountant could choose to conduct the surprise examination at any time during the year. The possibility of an unscheduled examination at any time would act as an additional deterrent to fraudulent activity by advisers, and would provide an independent check on the safety of pooled investment vehicle assets.

The proposed amendments would provide that an adviser is deemed to have custody of client assets held by related persons. These amendments would result in the rule being easier to understand for advisers. Similarly, the proposed amendments would add to the rule definitions of ''control'' and ''related person'' to assist advisers in understanding the rule.

The Commission is proposing to amend rule 206(4)–2 pursuant to the authority set forth in sections 206(4) and 211(a) of the Advisers Act [15 U.S.C. 80b–6(4) and 80b–11(a)]; to amend rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11]; to amend Form ADV pursuant to the authority set forth in sections 203(c)(1), 204, and 211(a) of the Advisers Act [15 U.S.C. 80b–3(c)(1), 80b–4 and 80b–11(a)]; and to amend Form ADV–E pursuant to our authority set forth in sections 204, 206(4), and 211(a) of the Advisers Act [15 U.S.C. 80b–4, 80b–6(4), and 80b–11(a)]. Section 206(4) gives us authority to issue rules designed to prevent fraudulent, deceptive, or manipulative acts or practices. Section 211 gives us authority to classify, by rule, persons and matters within our jurisdiction and to prescribe different requirements for different classes of persons, as necessary or appropriate to the exercise of our authority under the Act. Section 203(c)(1) gives us authority to prescribe registration forms, by rule, to collect information and documents, as necessary or appropriate in the public interest or for the protection of investors. Section 204 gives us authority to prescribe, by rule, such records and reports that an adviser must make, keep

[170] As stated above we estimate that there would be 12,272 advisers subject to the Form ADV filing requirement. *See supra* note 113 ((22.50 – 22.25) × 12,272 = 3,068).

[171] We expect that the function of completing Form ADV would be performed by compliance clerks at a cost of $63 per hour. The total cost would be $193,284 (3,068 × $63 = $193,284). *See supra* note 155 for explanation of the hourly compliance clerk cost estimate.

[172] 575 − 12 = 563.

[173] We expect that the function of completing Form ADV–E would be performed by compliance clerks at a cost of $63 per hour. The total cost would therefore be $35,469. *See supra* note 155 for explanation of the hourly compliance clerk cost estimate.

[174] 5 U.S.C. 603(a).

[175] Rule 206(4)–2(a)(3)(i) and (ii).

[176] Rule 206(4)–2(a)(3)(iii) and (b)(3).

[177] Proposed rules 206(4)–2(a)(3) and (b)(3). As described above, the rules would continue to contain a limited exception to this requirement for audited pooled investment vehicles.

[178] Proposed rule 206(4)–2(a)(4).

[179] Proposed rule 206(4)–2(c)(2). Under the current custody rule, an adviser may or may not have custody if a related person has custody of its clients' assets.

for prescribed periods, or disseminate, as necessary or appropriate in the public interest or for the protection of investors.

C. Small Entities Subject to Rule

Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (i) Has assets under management having a total value of less than $25 million; (ii) did not have total assets of $5 million or more on the last day of its most recent fiscal year; and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had $5 million or more on the last day of its most recent fiscal year.[180]

The Commission estimates that as of February 2009 approximately 177 SEC-registered investment advisers that have custody of client assets were small entities, and that no more than 8 of these advisers or their related persons would serve as a qualified custodian for client funds or securities under the proposed rule in connection with advisory services the advisers provides to their clients.[181]

D. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed rule amendments would impose certain reporting, recordkeeping and compliance requirements on advisers, including small advisers. The rule would require advisers that are subject to the surprise examination to complete Form ADV–E and to maintain internal control reports in certain instances. In addition, under the proposed amendments, each adviser that is required to undergo an annual surprise examination must enter into a written agreement with the independent public accountant that performs the surprise examination that would specify certain duties the accountant would have to perform as part of the surprise examination engagement. Investment advisers, under the proposed rule amendments, would have to maintain a copy of an internal control report that an adviser would be required to obtain or receive from its related person for five years from the end of the fiscal year in which the internal control report is finalized.

We estimated that the average annual accounting fee for such surprise examination would be $8,100 for each of the advisers subject to the surprise examination.[182] This is based on our estimate that each adviser, on average, would be subject to the surprise examination with respect to 928 client accounts. Most small advisers that would be subject to the surprise examination have less than 6 accounts that would be included in the surprise examination.[183] Thus the accounting fees for surprise examination conducted on small advisers would likely be much lower than our estimated average cost. As a result, the potential impact of the amendments on small entities due to the proposed surprise examination requirement should not be significant.

We also estimated that on average an internal control report would cost approximately $250,000 per year, but would vary based on the size and services offered by the qualified custodian. As stated above, we estimate that no more than eight advisers would have to obtain these reports, half of which would have to obtain the report and the other half would have to receive the report from a related person.

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rule amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed rule amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part thereof, for such small entities.

Regarding the first and fourth alternatives, we do not believe that differing compliance or reporting requirements or an exemption from coverage of the rule amendments, or any part thereof, for small entities, would be appropriate or consistent with investor protection. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisory firms, it would be inconsistent with the purposes of the Act to specify different requirements for small entities under the proposed amendments.

Regarding the second alternative, the proposed amendments would clarify when an investment adviser, including a small adviser, has custody. We also have endeavored to consolidate and simplify the rule, by adding new definitions to the rule.

Regarding the third alternative, we do not consider using performance rather than design standards to be consistent with our statutory mandate of investor protection with respect to custody of client assets by investment advisers.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. In particular, the Commission seeks comment on:

- The number of small entities that would be affected by the proposed rule; and
- whether the effect of the proposed rule on small entities would be economically significant.

Commenters are asked to describe the nature of any effect and provide empirical data supporting the extent of the effect.

VII. Effects on Competition, Efficiency and Capital Formation

Section 202(c)(1) of the Advisers Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[184] Today the Commission is proposing amendments to rule 204–2, Part 1A of Form ADV and Form ADV–E in connection with proposing amendments to rule 206(4)–2, the rule governing registered investment adviser custodial practices.[185]

The proposed amendments to Part 1A of Form ADV are designed to provide us with additional details concerning the custody practices of advisers registered with the Commission, and to provide additional data to assist in our risk-

[180] 17 CFR 275.0–7(a).

[181] This estimate is based on the information submitted by SEC-registered advisers on Form ADV, Part 1A [17 CFR 279.1].

[182] *See supra* note 102.

[183] Based on data collected from the IARD as of February 2009, more than half of the 177 small advisers would be subject to the surprise examination with respect to no more than 6 accounts.

[184] 15 U.S.C. 80b–2(c).

[185] We are proposing amendments to rule 206(4)–2 pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act. Analysis of the effects of these proposed amendments is contained in sections IV, V, and VI above.

based examination program. Under the proposed amendments to Form ADV–E, the form and attached accountant's certificate would be filed electronically on the IARD system. In addition, the rule would require the accountant performing an annual surprise examination to, upon termination of its engagement, file a Form ADV–E and a termination statement to explain the reasons for such termination. Both Part 1A of Form ADV and Form ADV–E would be available to the public on the Commission's Web site.

Public availability of more detailed disclosure of advisers' custodial practices will permit investors to use this information together with other information they obtain from Form ADV in making more informed decisions about whether to hire or retain a particular adviser. A more informed investing public will create a more efficient marketplace and strengthen competition among advisers. Moreover, the electronic filing requirements are expected to expedite and simplify the process of filing Form ADV–E and attached accountant's certificate with the Commission, thus further improving efficiency. We believe, however, that the proposed amendments are unrelated to, and will have little or no effect on, capital formation.

We are proposing to amend rule 204–2 to require that, if an independent custodian does not maintain client assets but the adviser or a related person instead serves as a qualified custodian for client funds or securities under the rule in connection with advisory services the adviser provides to clients, the adviser must maintain a copy of any internal control report obtained or received pursuant to rule 206(4)–2(a)(6) for five years from the end of the fiscal year in which the internal control report is finalized.[186] The proposed amendment is designed to provide our examiners important information about the safeguards in place at an adviser or a related person that maintains client assets. We believe that the proposed amendment would not materially increase the compliance burden on advisers under rule 204–2 and thus would not affect competition, efficiency and capital formation.

The Commission requests comment whether the above proposals, if adopted, would promote efficiency, competition, and capital formation. Commenters are requested to provide empirical data to support their views.

VIII. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,''[187] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed rule amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IX. Statutory Authority

We are proposing amendments to rule 206(4)–2 (17 CFR 275.206(4)–2) pursuant to our authority set forth in sections 206(4) and 211(a) of the Advisers Act (15 U.S.C. 80b–6(4) and 80b–11(a)). We are proposing amendments to rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act (15 U.S.C. 80b–4 and 80b–11). We are proposing amendments to Part 1 of Form ADV (17 CFR 279.1) pursuant to our authority set forth in sections 203(c)(1), 204, and 211(a) of the Advisers Act (15 U.S.C. 80b–3(c)(1), 80b–4 and 80b–11(a)). We are proposing amendments to Form ADV–E (17 CFR 279.8) pursuant to our authority set forth in sections 204, 206(4), and 211(a) of the Advisers Act (15 U.S.C. 80b–4, 80b–6(4), and 80b–11(a)).

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule and Form Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

1. The authority citation for Part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

* * * * *

2. Section 275.204–2 is amended by:

a. Removing ''in effect, and'' at the end of paragraph (a)(17)(i) and adding in its place ''in effect;'';

b. Removing the period at the end of paragraph (a)(17)(ii) and adding in its place a semicolon; and

c. Adding paragraph (a)(17)(iii).

The addition reads as follows:

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(17) * * *

(iii) A copy of any internal control report obtained or received pursuant to § 275.206(4)–2(a)(6)(ii).

* * * * *

3. Section 275.206(4)–2 is revised to read as follows:

§ 275.206(4)–2 Custody of funds or securities of clients by investment advisers.

(a) *Safekeeping required.* If you are an investment adviser registered or required to be registered under section 203 of the Act (15 U.S.C. 80b–3), it is a fraudulent, deceptive, or manipulative act, practice or course of business within the meaning of section 206(4) of the Act (15 U.S.C. 80b–6(4)) for you to have custody of client funds or securities unless:

(1) *Qualified custodian.* A qualified custodian maintains those funds and securities:

(i) In a separate account for each client under that client's name; or

(ii) In accounts that contain only your clients' funds and securities, under your name as agent or trustee for the clients.

(2) *Notice to clients.* If you open an account with a qualified custodian on your client's behalf, either under the client's name or under your name as agent, you notify the client in writing of the qualified custodian's name, address, and the manner in which the funds or securities are maintained, promptly when the account is opened and following any changes to this information. Include in the notification a statement urging the client to compare the account statements he or she shall receive from the custodian with those from the adviser.

[186] Proposed rule 206(4)–2 would require that if an independent custodian does not maintain client assets but the adviser or a related person instead serves as a qualified custodian for client funds or securities under the rule in connection with advisory services the adviser provides to clients, the adviser must obtain, or receive from the related person, no less frequently than once each calendar year an internal control report, which includes an opinion from an independent public accountant with respect to the adviser's or related person's controls relating to custody of client assets. *See* proposed rule 206(4)–2(a)(6)(ii).

[187] Public Law No. 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

(3) *Account statements to clients.* You have a reasonable basis, after due inquiry, for believing that the qualified custodian sends an account statement, at least quarterly, to each of your clients for which it maintains funds or securities, identifying the amount of funds and of each security in the account at the end of the period and setting forth all transactions in the account during that period.

(4) *Independent verification.* The client funds and securities for which you have custody are verified by actual examination at least once during each calendar year by an independent public accountant, pursuant to a written agreement between you and the accountant, at a time that is chosen by the accountant without prior notice or announcement to you and that is irregular from year to year. The written agreement must also require the accountant to:

(i) File a certificate on Form ADV–E (17 CFR 279.8) with the Commission within 120 days of the time chosen by the accountant in paragraph (a)(4) of this section, stating that it has examined the funds and securities and describing the nature and extent of the examination;

(ii) Upon finding any material discrepancies during the course of the examination, notify the Commission within one business day of the finding, by means of a facsimile transmission or electronic mail, followed by first class mail, directed to the attention of the Director of the Office of Compliance Inspections and Examinations; and

(iii) Upon resignation or dismissal from, or other termination of, the engagement, or upon removing itself or being removed from consideration for being reappointed, file within four business days Form ADV–E accompanied by a statement that includes:

(A) The date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant; and

(B) An explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination.

(5) *Special rule for limited partnerships and limited liability companies.* If you or a related person is a general partner of a limited partnership (or managing member of a limited liability company, or hold a comparable position for another type of pooled investment vehicle), the account statements required under paragraph (a)(3) of this section must be sent to each limited partner (or member or other beneficial owner).

(6) *Investment advisers acting as qualified custodians.* If you or a related person maintains client funds or securities pursuant to this section as a qualified custodian in connection with advisory services you provide to clients:

(i) The independent public accountant you retain to perform the independent verification required by paragraph (a)(4) of this section must be a member registered with, and that is subject to regular inspection as of the commencement of the professional engagement period by, the Public Company Accounting Oversight Board in accordance with its rules; and

(ii) You must obtain, or receive from your related person, no less frequently than once each calendar year, a written internal control report prepared by an independent public accountant:

(A) The internal control report must include an opinion of an independent public accountant, issued in accordance with the standards of the Public Company Accounting Oversight Board, with respect to the description of controls placed in operation relating to custodial services, including the safeguarding of funds and securities held by either you or a related person on behalf of your advisory clients, and tests of operating effectiveness; and

(B) The independent public accountant must be a member registered with, and that is subject to regular inspection as of the commencement of the professional engagement period by, the Public Company Accounting Oversight Board in accordance with its rules.

(7) *Independent representatives.* A client may designate an independent representative to receive, on his behalf, notices and account statements as required under paragraphs (a)(2) and (a)(3) of this section.

(b) *Exceptions.* (1) *Shares of mutual funds.* With respect to shares of an open-end company as defined in section 5(a)(1) of the Investment Company Act of 1940 (15 U.S.C. 80a–5(a)(1)) (''mutual fund''), you may use the mutual fund's transfer agent in lieu of a qualified custodian for purposes of complying with paragraph (a) of this section.

(2) *Certain privately offered securities.* (i) You are not required to comply with paragraph (a)(1) of this section with respect to securities that are:

(A) Acquired from the issuer in a transaction or chain of transactions not involving any public offering;

(B) Uncertificated, and ownership thereof is recorded only on books of the issuer or its transfer agent in the name of the client; and

(C) Transferable only with prior consent of the issuer or holders of the outstanding securities of the issuer.

(ii) Notwithstanding paragraph (b)(2)(i) of this section, the provisions of this paragraph (b)(2) are available with respect to securities held for the account of a limited partnership (or limited liability company, or other type of pooled investment vehicle) only if the limited partnership is audited, and the audited financial statements are distributed, as described in paragraph (b)(3) of this section.

(3) *Limited partnerships subject to annual audit.* You are not required to comply with paragraph (a)(3) of this section with respect to the account of a limited partnership (or limited liability company, or another type of pooled investment vehicle) that is subject to audit (as defined in section 2(d) of Article 1 of Regulation S–X (17 CFR 210.1–02(d)):

(i) At least annually and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) within 120 days of the end of its fiscal year; and

(ii) Upon liquidation and distributes its audited financial statements prepared in accordance with generally accepted accounting principles to all limited partners (or members or other beneficial owners) promptly after the completion of such audit.

(4) *Registered investment companies.* You are not required to comply with this section (17 CFR 275.206(4)–2) with respect to the account of an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 to 80a–64).

(c) *Definitions.* For the purposes of this section:

(1) *Control* means the power, directly or indirectly, to direct the management or policies of a person, whether through ownership of securities, by contract, or otherwise. Control includes:

(i) Each of your firm's officers, partners, or directors exercising executive responsibility (or persons having similar status or functions) is presumed to control your firm;

(ii) A person is presumed to control a corporation if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or

(B) Has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities;

(iii) A person is presumed to control a partnership if the person has the right to receive upon dissolution, or has

contributed, 25 percent or more of the capital of the partnership;

(iv) A person is presumed to control a limited liability company (''LLC'') if the person:

(A) Directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC;

(B) Has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or

(C) Is an elected manager of the LLC; or

(v) A person is presumed to control a trust if the person is a trustee or managing agent of the trust.

(2) *Custody* means holding, directly or indirectly, client funds or securities, or having any authority to obtain possession of them. You have custody if a related person holds, directly or indirectly, client funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to clients. Custody includes:

(i) Possession of client funds or securities, (but not of checks drawn by clients and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly but in any case within three business days of receiving them;

(ii) Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw client funds or securities maintained with a custodian upon your instruction to the custodian; and

(iii) Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your supervised person legal ownership of or access to client funds or securities.

(3) *Independent public accountant* means a public accountant that meets the standards of independence described in rule 2–01(b) and (c) of Regulation S–X (17 CFR 210.2–01(b) and (c)).

(4) *Independent representative* means a person that:

(i) Acts as agent for an advisory client, including in the case of a pooled investment vehicle, for limited partners of a limited partnership (or members of a limited liability company, or other beneficial owners of another type of pooled investment vehicle) and by law or contract is obliged to act in the best interest of the advisory client or the limited partners (or members, or other beneficial owners);

(ii) Does not control, is not controlled by, and is not under common control with you; and

(iii) Does not have, and has not had within the past two years, a material business relationship with you.

(5) *Qualified custodian* means:

(i) A bank as defined in section 202(a)(2) of the Advisers Act (15 U.S.C. 80b–2(a)(2)) or a savings association as defined in section 3(b)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1813(b)(1)) that has deposits insured by the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act (12 U.S.C. 1811);

(ii) A broker-dealer registered under section 15(b)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(1)), holding the client assets in customer accounts;

(iii) A futures commission merchant registered under section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)), holding the client assets in customer accounts, but only with respect to clients' funds and security futures, or other securities incidental to transactions in contracts for the purchase or sale of a commodity for future delivery and options thereon; and

(iv) A foreign financial institution that customarily holds financial assets for its customers, provided that the foreign financial institution keeps the advisory clients' assets in customer accounts segregated from its proprietary assets.

(6) *Related person* means any person, directly or indirectly, controlling or controlled by you, and any person that is under common control with you.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

4. The authority citation for Part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

5. Form ADV (referenced in § 279.1) is amended by:

a. In the General Instructions, revising the first bullet and last paragraph of instruction 4;

b. In Part 1A, revising the last paragraph of Item 7.A. and revising Item 9; and

c. In Schedule D, revising Sections 7.A., 9.C. and 9.D.

The revisions read as follows:

Note: The text of Form ADV does not and this amendment will not appear in the Code of Federal Regulations.

Form ADV

* * * * *

Form ADV: General Instructions

* * * * *

4. * * *

• information you provided in response to Items 1, 3, 9 (except 9.A.(2), 9.B.(2), and 9.(E)), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B becomes inaccurate in any way;

* * * * *

If you are submitting an other-than-annual amendment, you are not required to update your responses to Items 2, 5, 6, 7, 9.A.(2), 9.B.(2), 9.E., or 12 of Part 1A or Items 2.H. or 2.J. of Part 1B even if your responses to those items have become inaccurate. If you are amending Part II, do not file the amendment with the SEC.

* * * * *

Part 1A

* * * * *

Item 7 Financial Industry Affiliates

* * * * *

A. * * *

If you checked Items 7.

A.(1) or (3), you must list on Section 7.A. of Schedule D all your *related persons* that are investment advisers, broker-dealers, municipal securities dealers, or government securities broker or dealers.

* * * * *

BILLING CODE 8010–01–P

Item 9 Custody

In this Item, we ask you whether you or a related person has custody of client assets and about your custodial practices.

A. (1) Do you have custody of any advisory clients':

		Yes	No
(a)	cash or bank accounts?	☐	☐
(b)	securities?	☐	☐

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you deduct your advisory fees directly from your clients' accounts but you do not otherwise have custody of your clients' funds or securities.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the amount of client funds and securities and total number of clients for which you have custody:

U.S. Dollar Amount Total Number of Clients

(a) $_____ (b) _____

B. (1) Do any of your related persons have custody of any of your advisory clients':

		Yes	No
(a)	cash or bank accounts?	☐	☐
(b)	securities?	☐	☐

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the amount of client funds and securities and total number of clients for which your related persons have custody:

U.S. Dollar Amount Total Number of Clients

(a) $_____ (b) _____

C. If you or your related persons have custody of client funds or securities, check all the following that apply:

☐ (1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage.

☐ (2) An independent public accountant audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools.

☐ (3) An independent public accountant conducts an annual surprise examination of client funds and securities.

☐ (4) An independent public accountant prepares an internal control report with respect to custodial services when you or your related persons are qualified custodians for client funds and securities.

The instruction to Item 9.A.(1)(a) and (b) above regarding fee deductions does not apply to this Item 9.C.

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report.

D. Do you or your related persons act as qualified custodians for your clients in connection with advisory services you provide to clients?

		Yes	No
(1)	you act as a qualified custodian	☐	☐
(2)	your related persons act as qualified custodians	☐	☐

If you responded "yes" to Item 9.D.(2), list in Section 9.D. of Schedule D all your related persons that act as qualified custodians for your clients in connection with advisory services you provide to clients (you do not have to list broker-dealers already identified as qualified custodians in Section 7.A. of Schedule D).

E. If you are filing your annual updating amendment and you were subject to a surprise examination by an independent public accountant during your last fiscal year, provide the date (MM/YYYY) the examination commenced: _____

* * * * *

Schedule D

* * * * *

SECTION 7.A. Affiliated Investment Advisers and Broker-Dealers

You must complete the following information for each related person investment adviser and broker-dealer. You must complete a separate Schedule D Page 3 for each listed related person.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Legal Name of Related Person:

_____

Primary Business Name of Related Person:

_____

Related person is (check only one box): ☐ Investment Adviser ☐ Broker-Dealer ☐ Dual (Investment Adviser and Broker-Dealer)

If the related person is a broker-dealer, is it a qualified custodian for your clients in connection with advisory services you provide to clients? Yes ☐ No ☐

Related Person Adviser's SEC File Number (if any) 801- _____
Related Person's CRD Number (if any): _____

* * * * *

SECTION 9.C. Independent Public Accountant

You must complete the following information for each independent public accountant engaged to perform a surprise examination, perform an audit of a pooled investment vehicle that you manage, or prepare an internal control report. You must complete a separate Schedule D Page 4 for each independent public accountant.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(1) Name of the independent public accountant:

_____

(2) The location of the independent public accountant's office responsible for the services provided:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

(3) Is the independent public accountant registered with the Public Company Accounting Oversight Board? Yes ☐ No ☐

(4) If yes to (3) above, is the independent public accountant subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules? Yes ☐ No ☐

(5) The independent public accountant is engaged to:

A. ☐ audit a pooled investment vehicle
B. ☐ perform a surprise examination of client assets
C. ☐ prepare an internal control report

(6) Does the report prepared by the independent public accountant that audited the pooled investment vehicle or that examined internal controls contain an unqualified opinion?
Yes ☐ No ☐

SECTION 9.D. Related Person Qualified Custodian

You must complete the following information for each of your related persons that acts as a qualified custodian for your clients in connection with advisory services you provide to clients (you do not have to list broker-dealers already identified as qualified custodians in Section 7.A. of Schedule D). You must complete a separate Schedule D Page 5 for each listed related person.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Legal Name of Related Person:

_____

Primary Business Name of Related Person:

_____

The location of the related person's office responsible for custody of your clients' assets:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

Related Person is (check only one box):

☐ U.S. Bank or Savings Association
☐ Futures Commission Merchant
☐ Foreign Financial Institution

* * * * *

6. Form ADV–E (referenced in § 279.8) is amended by revising the instructions to the Form.

The revisions read as follows:

Note: The text of Form ADV–E does not and this amendment will not appear in the Code of Federal Regulations.

Form ADV–E

* * * * *

Instructions

This Form must be completed by investment advisers that have custody of client funds or securities and that are subject to an annual surprise examination. This Form may *not* be used to amend any information included in an investment adviser's registration statement (*e.g.*, business address).

Investment Adviser

1. All items must be completed by the investment adviser.

2. Give this Form to the independent public accountant that, in compliance with rule 206(4)–2 under the Investment Advisers Act of 1940 (the "Act") or applicable State law, examines client funds and securities in the custody of the investment adviser within 120 days of the time chosen by the accountant for the surprise examination and upon such accountant's resignation or dismissal from, or other termination of, the engagement, or if the accountant removes itself or is removed from consideration for being reappointed.

Accountant

3. The independent public accountant performing the surprise examination must submit (i) this Form and a certificate of accounting required by rule 206(4)–2 under the Act or applicable State law within 120 days of the time chosen by the accountant for the surprise examination, and (ii) this Form and a statement, within four business days of its resignation or dismissal from, or other termination of, the engagement, or removing itself or being removed from consideration for being reappointed, that includes (A) the date of such resignation, dismissal, removal, or other termination, and the name, address, and contact information of the accountant, and (B) an explanation of any problems relating to examination scope or procedure that contributed to such resignation, dismissal, removal, or other termination:

(a) By mail, until the Investment Adviser Registration Depository ("IARD") accepts electronic filing of the Form, to the Securities and Exchange

Commission or appropriate State securities administrators. File the original and one copy with the Securities and Exchange Commission's principal office in Washington, DC at the address on the top of this Form, one copy with the regional office for the region in which the investment adviser's principal business operations are conducted, or one copy with the appropriate State administrator(s), if applicable; or

(b) By electronic filing of the certificate of accounting and statement regarding resignation, dismissal, other termination, or removal from consideration for reappointment on the IARD, when the IARD accepts electronic filing of the Form.

* * * * *

By the Commission.

Dated: May 20, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–12182 Filed 5–26–09; 8:45 am]

BILLING CODE 8010–01–C

Federal Register

Wednesday,
May 27, 2009

Part V

The President

Proclamation 8385—Prayer for Peace, Memorial Day, 2009

Federal Register
Vol. 74, No. 100
Wednesday, May 27, 2009

Presidential Documents

Title 3—

The President

Proclamation 8385 of May 22, 2009

Prayer for Peace, Memorial Day, 2009

By the President of the United States of America

A Proclamation

For over two centuries, Americans have defended our Nation's security and protected our founding principles of democracy and equal justice under law. On Memorial Day, we honor those who have paid the ultimate price in defense of these freedoms.

Members of the United States Armed Forces have placed our Nation's safety before their own for generations. From the first shots fired at Lexington and Concord to the current conflicts in Iraq and Afghanistan, these brave patriots have taken on great risks to keep us safe, and they have served with honor and distinction. All Americans who have enjoyed the blessings of peace and liberty remain in their debt.

As we remember the selfless service of our fallen heroes, we pray for God's grace upon them. We also pray for all of our military personnel and veterans, their families, and all those who have lost loved ones in the defense of our freedom and safety.

Today, as we commend their deeds, we also bear a heavy burden of responsibility to ensure that their sacrifices will not have been in vain. This means that, as we uphold the ideals for which many have given their last full measure of devotion, the United States must never waver in its determination to defend itself, to be faithful in protecting liberty at home and abroad, and to pursue peace in the world.

In respect for their dedication and service to America, the Congress, by a joint resolution approved on May 11, 1950, as amended (36 U.S.C. 116), has requested the President to issue a proclamation calling on the people of the United States to observe each Memorial Day as a day of prayer for permanent peace and designating a period on that day when the people of the United States might unite in prayer. The Congress, by Public Law 106–579, has also designated 3:00 p.m. local time on that day as a time for all Americans to observe, in their own way, the National Moment of Remembrance.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim Memorial Day, May 25, 2009, as a day of prayer for permanent peace, and I designate the hour beginning in each locality at 11:00 a.m. of that day as a time to unite in prayer. I also ask all Americans to observe the National Moment of Remembrance beginning at 3:00 p.m. local time on Memorial Day. I urge the press, radio, television, websites, and all other media to participate in these observances. I also request the Governors of the United States and the Commonwealth of Puerto Rico, and the appropriate officials of all units of government, to direct that the flag be flown at half-staff until noon on this Memorial Day on all buildings, grounds, and naval vessels throughout the United States, and in all areas under its jurisdiction and control. I also request the people of the United States to display the flag at half-staff from their homes for the customary forenoon period.

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

[FR Doc. E9–12509
Filed 5–26–09; 11:15 am]
Billing code 3195–W9–P

Reader Aids

Federal Register

Vol. 74, No. 100

Wednesday, May 27, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MAY

20201–20404 1
20405–20558 4
20559–20864 5
20865–21244 6
21245–21532 7
21533–21766 8
21767–22088 11
22089–22416 12
22417–22636 13
22637–22818 14
22819–23108 15
23109–23286 18
23287–23604 19
23605–23788 20
23789–23936 21
23937–24694 22
24695–25144 26
25145–25384 27

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7562 (superseded by 8380) 23603
8366 20403
8367 20861
8368 20863
8369 21241
8370 21243
8371 21527
8372 21529
8373 22085
8374 22089
8375 22417
8376 22419
8377 22815
8378 22817
8379 23107
8380 23603
8381 23605
8382 23607
8383 24689
8384 24691
8385 25383

Executive Orders:
13508 23099

Administrative Orders:
Memorandums:
Memo. of May 1, 2009 20865
Memo. of May 5, 2009 21531
Memo. of April 30, 2009 22637
Memo. of May 15, 2009 23787
Notices:
Notice of May 14, 2009 23287
Notice of May 19, 2009 23935
Memo. of May 20, 2009 24693

5 CFR

300 23109
531 23937
532 ..... 20405, 22421
550 23937

Proposed Rules:
300 21771

6 CFR

Proposed Rules:
5 23957

7 CFR

305 23609
319 23609
1487 22089
1755 20559

Proposed Rules:
51 23128
301 22318
305 22318
318 22318
319 22318
330 22318
352 22318
457 23660
930 22112
945 23958
983 20630
1150 23359

9 CFR

93 22090

Proposed Rules:
201 22841

10 CFR

Proposed Rules:
37 20235
50 23254
52 23254
440 23804
600 20427

12 CFR

41 22639
222 22639
226 23289
229 21245
334 22639
571 22639
717 22639

Proposed Rules:
226 20784
227 20804
535 20804
611 23961
613 23961
615 23961
619 23961
620 23961
706 20804
913 22842
925 22848
1204 22842
1263 22848
1282 20236
1702 22842

13 CFR

121 20577

Proposed Rules:
313 20647
315 20647

14 CFR

25 ..... 21533, 22819, 23612
39 ..... 20580, 20867, 21246, 21249, 21251, 21254, 21544, 22091, 22422, 22424, 22426, 22429, 22432, 22435, 22646,

23109, 23110, 23305, 23614, 23617, 23619, 23622, 23625, 23938
47 22819
61 ....22649, 22819
63 ....22649, 22819
65 ....22649, 22819
71 ....20410, 20867, 20868, 20869, 22093, 22820, 22821, 25145
73 20201
91 ....20202, 22649, 24695
97 ....22668, 22670
120 22649
121 22649
135 ....20202, 22649, 24695
Proposed Rules:
25 20427
39 ....20431, 20659, 20661, 21274, 21278, 21281, 21284, 21285, 21561, 21772, 22123, 22125, 22127, 22712, 23129, 23131, 23664, 23668, 23671, 24712, 24715
71 ....20443, 23370, 23371
93 ....22714, 22717
135 20263
145 21287

15 CFR

730 23941
734 23941
738 23941
740 23941
742 23941
743 23941
744 23941
746 23941
772 23941
774 ....20870, 23941

16 CFR

3 20205
4 20205
641 22639
680 22639
681 22639
698 22639
Proposed Rules:
425 22720

17 CFR

200 20411
230 21255
232 21255
239 21255
274 21255
Proposed Rules:
1 ....21290, 23962
30 23962
150 23964
275 25354
279 25354

18 CFR

Proposed Rules:
Chap. I 23810, 24718

19 CFR

10 23949
101 23110
361 22094
Proposed Rules:
101 23133

20 CFR

Proposed Rules:
404 21563
416 21563

21 CFR

510 ....20582, 21767, 21768, 22821
520 ....21767, 21768
522 ....20582, 25146
524 22821
589 20583
601 20583
1308 ....23789, 23790
Proposed Rules:
601 20663

22 CFR

215 20871

24 CFR

3500 22822

26 CFR

1 ....21256, 21438, 25147
20 21438
25 21438
Proposed Rules:
1 ....21295, 21519, 23134
20 21519
25 21519
301 25177

29 CFR

2550 23951
4022 22826
Proposed Rules:
403 23811
408 23811
1601 23674
1602 23674
1603 23674
1607 23674
1610 23674
1611 23674
1614 23674
1625 23674
1690 23674

30 CFR

938 21768
Proposed Rules:
250 25177
256 25177
260 25177

31 CFR

596 23111
Proposed Rules:
103 22129

32 CFR

199 21547
706 24695

33 CFR

100 ....21550, 22095, 22672
117 ....20585, 23628, 23629, 24696
165 ....20412, 20414, 20586, 20588, 21550, 22100, 22685, 22687, 22689, 22691, 22828, 22830, 23112, 23113, 23630, 23793, 23796, 24697, 24699, 24701
Proposed Rules:
100 22142
110 24718
165 ....20270, 21564, 22722, 23139, 24722

34 CFR

668 20210
686 20210
690 20210
691 20210
Proposed Rules:
Chap. VI 24728

36 CFR

Proposed Rules:
242 22867

38 CFR

3 ....21258, 22103
17 22832
38 20225
Proposed Rules:
21 21565
36 22145

39 CFR

111 22835
955 20590
3001 ....20834, 23113
3050 20834

40 CFR

50 23307
51 22693
52 ....20599, 20601, 20872, 20874, 20877, 20880, 21550, 22693, 22837, 23632, 23952, 24703, 25153
60 23313
61 23313
63 22437
174 23635
180 ....20883, 20887, 21260, 22456, 22460, 22464, 23046, 23640, 24705, 25156
239 20227
258 20227
271 ....22469, 23328, 23645
745 21554
Proposed Rules:
51 22147
52 ....20665, 20895, 20896, 20897, 21295, 21568, 21578, 21588, 21594, 21599, 21604, 22147, 23678, 23812, 23965, 25200
60 ....21136, 23372, 25304
61 23372
63 ....21136, 22478
80 ....23678, 24904
93 23024
180 22478
260 25200
261 25200
271 ....22490, 23373, 23679

42 CFR

Proposed Rules:
50 21610
84 ....23814, 23815
412 ....21052, 24080
413 24080
415 24080
431 21232
433 21230
440 21232
441 21232
483 22208
489 24080

44 CFR

64 ....21267, 23115
65 21271
67 23117
Proposed Rules:
67 ....22151, 23140, 24729, 24738, 24743, 24753

45 CFR

286 25161
302 23798
303 23798
307 23798
Proposed Rules:
94 21610

46 CFR

2 20416
8 ....20416, 21554
189 20416

47 CFR

1 ....22104, 22696, 23328
2 22696
36 23955
64 20892
73 ....20419, 20420, 20601, 20893, 22710, 25163, 25169
74 ....23650, 25163
80 23329
90 ....20602, 23329, 23799
95 22696
Proposed Rules:
1 21613
2 22491
64 23815
73 ....20444, 20445, 22498, 25205
74 22498
90 23816
95 22491

48 CFR

5 22810
25 22810
52 22810
501 21272
525 20894
537 20605
549 21272
552 ....20605, 20894, 21272
904 23120
952 23120
970 23120
Proposed Rules:
19 23373
52 20666
541 23374
552 23374

49 CFR

200 25169
201 25169
209 ....23329, 25169
211 ....23329, 25169
212 25169
214 25169
215 25169

216 25169
219 25169
221 25169
224 25169
227 25169
228 ....25169, 25330
229 25169
230 25169
232 25169
235 25169
236 25169
238 25169
239 25169
240 25169
241 25169
244 25169
245 25169
256 25169
260 25169
268 25169
571 22348
585 22348
1002 20607
1580 23656

Proposed Rules:

240 25208
571 20445

50 CFR

17 23476
92 23336
229 23349
300 21194
402 20421
622 ....20229, 21558, 22476, 22710
648 ....20230, 20423, 20528, 21559
660 ....20610, 20620
679 ....22477, 23127, 23657, 23658, 23659

Proposed Rules:

17 ....21301, 21614, 22870, 23376
20 25209
100 22867
222 20667
223 ....20667, 23822
300 ....21615, 23965
648 ....20448, 23147
660 20897
679 ....22507, 24757, 24762
680 24762

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

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S. 454/P.L. 111–23
Weapon Systems Acquisition Reform Act of 2009 (May 22, 2009; 123 Stat. 1704)

H.R. 627/P.L. 111–24
Credit Card Accountability Responsibility and Disclosure Act of 2009 (May 22, 2009; 123 Stat. 1734)

Last List May 22, 2009

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