Federal Register

3–2–09 Monday
Vol. 74 No. 39 Mar. 2, 2009

Pages 9045–9158

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WHEN: Tuesday, March 17, 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

Printed on recycled paper.

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Rules and Regulations

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Doc. No. AMS–FV–08–0091; FV09–984–1 FIR]

Walnuts Grown in California; Changes to Regulations Governing Board Nominations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with a change, an interim final rule revising the administrative rules and regulations governing nominations for the California Walnut Board (Board). The Board locally administers the marketing order that regulates the handling of walnuts grown in California (order). This rule continues in effect an action that removes references to independent handlers, revises specifications under which groups of growers may submit nominations for certain grower positions on the Board, and corrects numerical references to other sections of the order. These changes are needed to bring the administrative rules and regulations into conformance with recently enacted amendments to the order concerning Board structure and nomination procedures.

DATES: *Effective Date:* April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Debbie Wray, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487–5901, Fax: (559) 487–5906, or E-mail: *Debbie.Wray@ams.usda.gov*, or *Kurt.Kimmel@ams.usda.gov*.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 984, as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that revises the administrative rules and regulations governing Board nominations by removing references to ''independent'' handlers, adding language specifying that groups of growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35% of the prior year's crop may submit nominations for grower positions on the ballots, and correcting references to order sections that were renumbered as a result of recent order amendments.

Section 984.35 of the California walnut marketing order provides for the allocation of grower and handler positions on the Board. Historically, some members represented the interests of a major industry cooperative, and some members represented independent interests. Some members represented the interests of certain production area districts, and some served the industry ''at large.'' Recently, the structure of the industry changed when the major cooperative handler became a publicly-traded corporation. Subsequently, the industry approved amendments to the order that restructured the Board to reflect the changes to the industry's composition. Language specifying membership allocation between cooperative and independent interests was removed from the order because all production area walnut handlers are now considered independent. Alternative membership allocation provisions were added to the order. Board membership positions are now allocated between growers and handlers, the specific Districts within the production area, and grower positions with no District affiliation (''at large'' positions). In the event that one industry handler handles 35 percent or more of the crop, such handler—and growers affiliated with such handler—are entitled to a given number of Board positions. As a result of the amendments, some sections of the order were renumbered.

Section 984.37 of the order provides authority for the Board, with the approval of USDA, to make changes to the Board nomination procedures specified in the order. The procedures are contained in the order's administrative rules and regulations. Prior to this action, § 984.437 of the regulations specified that if the ''at large'' grower position on the Board was assigned to represent independent growers, groups of ten or more growers who marketed a combined volume of 500 or more tons of walnuts through independent handlers in the prior year could propose a nominee for the ballot. The previous regulations also specified that groups of ten or more growers from

each district who marketed an aggregate of 500 or more tons of walnuts through independent handlers in the prior year could propose nominees for the independent grower positions in their districts.

The amended order no longer differentiates between cooperative and independent entities, and Board positions are no longer apportioned to represent either cooperative or independent entities. References in the order to independent handlers have been removed from the provisions specifying Board nominations. This rule continues in effect the action that changes § 984.437(a) and (b) of the administrative rules and regulations by removing references to independent handlers. Changes made to those paragraphs also specify that groups of ten or more growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop may nominate growers to serve in the ''at large'' grower positions. Further revisions to the regulations specify that groups of ten or more growers from each district who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop may nominate growers to represent each district. Finally, this rule also continues in effect the revision of certain references to renumbered order provisions in the regulations that are no longer correct.

This rule was unanimously recommended by the Board at its meeting on September 12, 2008.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. The Small Business Administration (SBA) defines small agricultural service firms as those whose annual receipts are less than $7,000,000, and defines small agricultural producers as those whose annual receipts are less than $750,000 (13 CFR 121.201).

There are currently 55 handlers of California walnuts subject to regulation under the marketing order, and there are approximately 4,000 growers in the production area. USDA's National Agricultural Statistics Service (NASS) reports that California walnuts were harvested from a total of 218,000 bearing acres during 2007–08. The average yield for the 2007–08 crop was 1.49 tons per acre, which is slightly lower than the 1.53 tons per acre average for the previous five years. NASS reported the value of the 2007–08 crop at $2,320 per ton, which is considerably higher than the previous five-year average of $1,384 per ton.

At the time of the 2002 Census of Agriculture, which is the most recent information available, approximately 83 percent of California's walnut farms were smaller than 100 acres. Forty-seven percent were between 1 and 15 acres. A 100-acre farm with an average yield of 1.49 tons per acre would have been expected to produce about 149 tons of walnuts during 2007–08. At $2,320 per ton, that farm's production would have had an approximate value of $345,000. Assuming that the majority of California's walnut farms are still smaller than 100 acres, it could be concluded that the majority of the growers had receipts of less than $345,000 in 2007–08. This is well below the SBA threshold of $750,000, thus, the majority of California's walnut growers would be considered small growers according to SBA's definition.

According to information supplied by the industry, approximately two-thirds of California's walnut handlers shipped merchantable walnuts valued under $7,000,000 during the 2007–08 marketing year and would therefore be considered small handlers according to the SBA definition.

This rule continues in effect the action that revises the administrative rules and regulations governing the nomination of Board members. References to independent handlers are being removed from the regulations to conform to recent amendments to the order. Procedures for the nomination of grower members by groups of growers who marketed an aggregate of at least 500 tons of walnuts through handlers that handled less than 35 percent of the prior year's crop are being added. References to renumbered sections of the order are being corrected. This action imposes no additional cost or burden on growers or handlers of any size.

The Board unanimously recommended these changes, which were necessary to bring the order's administrative rules and regulations into conformance with the recently amended order. As such, no alternatives were considered practicable.

The Board's meeting was widely publicized throughout the California walnut industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the September 12, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large California walnut handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

An interim final rule concerning this action was published in the **Federal Register** on December 5, 2008. Copies of the rule were mailed or sent by facsimile to all walnut handlers. In addition, the rule was made available through the Internet by USDA and the Office of the Federal Register. That rule provided for a 60-day comment period, which ended February 3, 2009. No comments were received.

The interim final rule published in the **Federal Register** contained an incorrect reference to an order provision. Section 984.437 has been modified to include the correct reference.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the Board, and other information, it is found that finalizing the interim final rule as published in the **Federal Register** (73

FR 73995, December 5, 2008), with a change, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 984

Walnuts, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

■ Accordingly, the interim final rule amending 7 CFR part 984, which was published at 73 FR 73995 on December 5, 2008, is adopted as a final rule with the following change:

PART 984—WALNUTS GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. In § 984.437 paragraphs (a) and (b) are revised to read as follows:

§ 984.347 Methods for proposing names of additional candidates to be included on walnut growers' nomination ballots.

(a) With regard to Board grower member positions specified in § 984.35(a)(5) and (b)(6), any ten or more such growers who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot the name of an eligible candidate for this position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

(b) Any ten or more growers eligible to serve in the grower member positions specified in § 984.35(a)(3) and (4) or § 984.35(b)(4) and (5) and who marketed an aggregate of 500 or more tons of walnuts through handlers who did not handle 35% or more of the crop during the marketing year preceding the year in which Board nominations are held, may petition the Board to include on the nomination ballot for a district the name of an eligible candidate for the applicable position, and the name of an eligible candidate to serve as his or her alternate. The names of the eligible candidates proposed pursuant to this paragraph shall be included on the ballot together with the names of any incumbents who are willing to continue serving on the Board.

* * * * *

Dated: February 24, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–4291 Filed 2–27–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1220

[Doc. No. AMS–LS–08–0074]

Soybean Promotion, Research, and Information Program: Amend Procedures To Request a Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the procedures to request a referendum under the Soybean Promotion, Research, and Consumer Information program, commonly known as the soybean checkoff program, by updating the number of soybean producers in the United States. The number of soybean producers, based on information provided by the Department of Agriculture (USDA), Farm Service Agency (FSA), is 589,182.

Additionally, this rule amends the regulations pursuant to administrative changes to Web site addresses and office locations made for the USDA's Agricultural Marketing Service (AMS).

DATES: *Effective Date:* March 3, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Payne, Chief, Marketing Programs Branch, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC 20250–0251; Telephone 202/720–1115; Fax 202/720–1125; or e-mail to *Kenneth.Payne@usda.gov*.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has waived the review process required by Executive Order 12866 for this action.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have a retroactive effect. The final rule would not preempt any other Federal or State laws, regulations, or policies.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Soybean Promotion and Research Order (Order) may file a petition with USDA stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with the law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review USDA's ruling on the petition, if a complaint for this purpose is filed within 20 days after the date of the entry of the ruling.

Further, section 1974 of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized under the laws of the United States or any State. One exception in the Act concerns assessments collected by Qualified State Soybean Boards (QSSBs). The exception provides that to ensure adequate funding of the operations of QSSBs under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a QSSB in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation of a QSSB or State soybean assessment.

Regulatory Flexibility Act

AMS has determined that this final rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

For the purpose of the Request for Referendum, the Secretary will use the most recent number of soybean producers identified by USDA's FSA. The latest number of soybean producers identified by FSA is 589,182 and was obtained using information from 2006 and 2007 acreage reports. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one

of the 2 years and exclude counting a producer more than once if that producer engaged in production during both years. Therefore, the number of soybean producers, as presented in the proposed rule, who would be eligible to participate in the Request for Referendum will be changed from 663,880 to 589,182. The majority of producers subject to the Order are small businesses under the criteria established by the Small Business Administration (SBA) [13 CFR 121.201]. SBA defines small agricultural producers as those having annual receipts of less than $750,000.

Further, the information collection requirements are minimal. Requesting form LS–51–1 to participate in a Request for Referendum may be done by mail, in-person, by facsimile, or via the Internet and would not impose a significant economic burden on participants. Finally, this final rule will amend, as described in the proposed rule, the regulations pursuant to administrative changes to Web site addresses and office locations for the AMS.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements included in 7 CFR part 1220 were previously approved by OMB and were assigned control number 0581–0093.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. The final rule establishing a Soybean Promotion, Research, and Consumer Information program was published in the July 9, 1991 issue of the **Federal Register** (56 FR 31043) and assessments began on September 1, 1991.

The Act required that an initial referendum be conducted no earlier than 18 months and not later than 36 months after the issuance of the Order to determine whether the Order should be continued. The initial referendum was conducted on February 9, 1994. On April 1, 1994, the Secretary announced that of the 85,606 valid ballots cast, 46,060 (53.8 percent) were in favor of continuing the Order and the remaining 39,546 votes (46.2 percent) were against continuing the Order. The Act required approval by a simple majority for the Order to continue.

The Act also required that within 18 months after the Secretary announced the results of the initial referendum, the Secretary would conduct a poll among producers to determine if producers favored a referendum on the continuance of the payment of refunds under the Order. On December 5, 2008, USDA published a proposed rule in the **Federal Register** (73 FR 74080) to amend the procedures for soybean producers to request a referendum on the Order.

A July 25, 1995, nationwide poll of soybean producers did not generate sufficient support for a refund referendum to be held. A refund referendum would have been held if at least 20 percent (not in excess of one-fifth of which may be producers in any one State) of the 381,000 producers (76,200) nationwide requested it. Only 48,782 soybean producers participated in the poll. Consequently, refunds were discontinued on October 1, 1995.

The Act also specifies that the Secretary shall, 5 years after the conduct of the initial referendum and every 5 years thereafter, provide soybean producers an opportunity to request a referendum on the Order. Additionally, the Act specifies that these subsequent polls require that at least 10 percent (not in excess of one-fifth in any one State) of all producers must request a referendum in order to trigger the conduct of a referendum. If a referendum is requested, it will be held within 1 year of that determination.

On October 1, 1999, through November 16, 1999, a nationwide Request for Referendum was conducted to determine if there was sufficient interest among soybean producers to vote on whether to continue the soybean checkoff program. Ten percent of the 600,813 soybean producers nationwide (not in excess of one-fifth of which may be producers in any one State) needed to participate in the Request for Referendum to trigger a referendum. Only 17,970 eligible soybean producers completed valid requests.

Five years later, another Request for Referendum was conducted May 1, 2004, through May 28, 2004. As in the prior Request for Referendum, the purpose was to determine if there was sufficient interest among soybean producers to vote on whether to continue the soybean checkoff Program. To be eligible to participate in the Request for Referendum, producers or the producer entity that they are authorized to represent had to certify and provide supporting documentation showing that they or the producer entity they represent paid an assessment sometime during the representative period between January 1, 2002 and December 31, 2003. Of the total 663,880 soybean producers eligible to participate, 3,206 valid Requests for Referendum were completed. This number did not meet the requisite number of 66,388; therefore, a referendum was not conducted.

In accordance with the Act, another Request for Referendum will be conducted in 2009. In the proposed rule, data provided by USDA's FSA was presented that would amend the number of soybean producers in preparation for this upcoming Request for Referendum. Presently, section 1220.616 of the Order states that the number of soybean producers in the United States is 663,880. This final rule amends the number of eligible producers based on information from acreage reports provided by FSA which identifies 589,182 soybean producers for crop years 2006 and 2007. The data were sorted in such a manner as to include all producers that were engaged in the production of soybeans in at least one of the 2 years and exclude counting a producer more than once if that producer engaged in production during both years. Using the last two crop years for which complete data is available ensures that all eligible producers are counted, as some producers use soybeans in rotation with other crops and do not plant soybeans every year or the market for some producers in a particular crop year may not have been conducive to growing soybeans. This methodology is consistent with that used during the last amendment to section 1220.616 in 2004.

In addition to the changes presented in the proposed rule relating to the number of eligible soybean producers, AMS also proposed amendments to sections 1220.622 and 1220.628 to update Web site addresses and office locations as a result of internal changes within the agency.

Discussion of Comments

In the December 5, 2008, proposed rule in the **Federal Register** (73 FR 74080), interested persons were provided the opportunity to comment on the changes to section 1220.616 of the regulations. The comment period ended December 22, 2008.

USDA received one comment raising a number of issues concerning the 2009 Request for Referendum, including the timing of the poll. The comment, however, did not address the proposed changes to section 1220.616. The 2009

Request for Referendum will be conducted in accordance with the Act and applicable regulations. Pursuant to 5 U.S.C. 553, good cause is found for not postponing the effective date of the action until 30 days after publication in the **Federal Register** in order to conduct the Request for Referendum within the timeframes that appear in the Act.

List of Subjects in 7 CFR Part 1220

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Reporting and recordkeeping requirements, Soybeans and soybean products.

■ For the reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

■ 1. The authority citation for part 1220 continues to read as follows:

Authority: 7 U.S.C. 6301–6311 and 7 U.S.C. 7401.

Subpart F—Procedures to Request a Referendum

■ 2. In § 1220.616, paragraph (d) is revised to read as follows:

§ 1220.616 General.

* * * * *

(d) For purposes of paragraphs (b) and (c) of this section, the number of soybean producers in the United States is determined to be 589,182.

§ 1220.622 [Amended]

■ 3. In § 1220.622, paragraph (b) the Web site ''*http://www.ams.usda.gov/lsg/mpb/rp-soy.htm*'' is removed and a new Web site ''*http://www.ams.usda.gov/lsmarketing programs*'' is added in its place.

■ 4. In § 1220.628, paragraph (a) is revised to read as follows:

§ 1220.628 Results of the request for referendum.

(a) The Administrator, FSA, shall submit to the Administrator, AMS, the reports from all State FSA offices. The Administrator, AMS shall tabulate the results of the Request for Referendum. USDA will issue an official press release announcing the results of the Request for Referendum and publish the same results in the **Federal Register**. In addition, USDA will post the official results at the following Web site: ''*http://www.ams.usda.gov/lsmarketingprograms*''.

Subsequently, State reports and related papers shall be available for public inspection upon request during normal business hours in the Marketing Programs Branch office, Livestock and Seed Program, AMS, USDA, Room 2628–S, STOP 0251, 1400 Independence Avenue, SW., Washington, DC.

* * * * *

Dated: February 24, 2009.

Robert C. Keeney,

Acting Associate Administrator.

[FR Doc. E9–4292 Filed 2–27–09; 8:45 am]

BILLING CODE 3410–02–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; Ivermectin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by IVX Animal Health, Inc. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites when cattle are treated with a 1-percent ivermectin solution by subcutaneous injection.

DATES: This rule is effective March 2, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV–104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8197, e-mail: *john.harshman@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: IVX Animal Health, Inc., 3915 South 48th Street Ter., St. Joseph, MO 64503, filed a supplement to ANADA 200–228 that provides for use of PHOENECTIN (ivermectin) Injection 1% for the treatment and control of parasites in cattle. The supplemental ANADA adds claims for persistent effectiveness against various species of external and internal parasites of cattle. The supplemental ANADA is approved as of January 23, 2009, and the regulations are amended in 21 CFR 522.1192 to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

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

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

List of Subjects in 21 CFR Part 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.

§ 522.1192 [Amended]

■ 2. In § 522.1192, in paragraph (b)(2), remove ''No. 055529'' and in its place add ''Nos. 055529 and 059130''; and remove paragraph (b)(3).

Dated: February 18, 2009.

Steven D. Vaughn,

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

[FR Doc. E9–4304 Filed 2–27–09; 8:45 am]

BILLING CODE 4160–01–S

Proposed Rules

Federal Register
Vol. 74, No. 39
Monday, March 2, 2009

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc (RR) RB211–524 Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain RR RB211–524 series turbofan engines. That AD currently requires initial and repetitive borescope inspections of the head section and meterpanel assembly of the combustion liner, and replacement if necessary with serviceable parts. This proposed AD would require those same inspections, and replacement if necessary with serviceable parts. This proposed AD would also add more part number (P/N) combustion liners to the applicability of this proposed AD. This proposed AD results from an inquiry submitted by an operator, which resulted in RR performing a complete review of the affected front combustion liner part numbers. We are proposing this AD to prevent deterioration of the engine combustion liner, which can result in combustion liner breakup, case burn-through, engine fire, and damage to the airplane.

DATES: We must receive any comments on this proposed AD by May 1, 2009.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 011–44–1332–242424; fax: 011–44–1332–249936, for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov*; telephone (781) 238–7178; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

On December 20, 2004, the FAA issued AD 2004–26–05, Amendment 39–13917 (70 FR 680, January 5, 1005). That AD requires initial and repetitive borescope inspections of the combustion liner head section and meterpanel assembly of the combustion liner and replacement if necessary, with serviceable parts. That action also reduces the inspection intervals of certain RB211–524 engine models that have not been repaired to RR Field Repair Scheme FRS5367/B, and requires a mandatory terminating action to be completed by a certain date. The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on RR RB211–524 series turbofan engines. The CAA advises that in August 2002, an RB211–524B engine suffered a combustion case burn-through as a result of combustor head breakup. The combustor head was previously inspected within the inspection interval specified in RR Service Bulletin (SB) No. RB.211–72–B482, Revision 8, dated November 15, 2001, only 228 cycles before the event. Subsequent to the original AD, RR has issued several revisions to SB No. RB.211–72–B482 to expand the applicability and clarify or revise the inspection requirements. In 2003, RR issued Alert Service Bulletin (ASB) No. RB.211–72–AB482, Revision 9, dated July 28, 2003, to reduce the inspection interval for RB211–524B–02, –524B2, –524B3, and –524B4 engines that have not been repaired to RR Field Repair Scheme FRS5367/B. This condition, if not corrected, could result in deterioration of the engine combustion liner, which can result in

combustion liner breakup, case burn-through, and engine fire.

Actions Since AD 2004–26–05 Was Issued

Since that AD was issued, an operator submitted an inquiry which resulted in RR performing a complete review of the affected front combustion liner part numbers. Rolls-Royce identified a number of P/Ns that must be included in the inspection requirements of this proposed AD.

Relevant Service Information

We have reviewed and approved the technical contents of the following RR SBs:

- RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, which describes the initial inspection procedures to detect cracking of the combustion liner head section and the meterpanel. This ASB also describes the compliance intervals to do the initial and repetitive inspections.
- RR SB No. RB.211–72–9670, dated August 27, 1993, which describes the procedures to incorporate the improved combustion liner head with C263 material, and to incorporate local thickened diffuser walls around the struts for engine models –524B–02, –524B2, –524B3, –524B4, –524C2 and –524D4.
- RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, which describes the procedures to incorporate the improved combustion liner with strengthened head and improved heat shields for engine models –524G and –524H.

The CAA classified ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, as mandatory and issued AD G–2003–0011 (previously 005–07–95), dated October 1, 2003, in order to ensure the airworthiness of these RR engines in the United Kingdom.

Bilateral Agreement Information

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Under this bilateral airworthiness agreement, the CAA kept us informed of the situation described above. We have examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require:

- Initial and repetitive borescope inspections of the combustion liner head section and meterpanel assembly of the combustion liner and, if necessary, replacement.
- Reduction of the inspection intervals of certain RB211–524 engine models that have not been repaired to RR Field Repair Scheme FRS5367/B, and
- A mandatory terminating action to the repetitive inspections to be completed no later than December 31, 2012.

The proposed AD would require that you do these actions using the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 18 engines installed on airplanes of U.S. registry. We also estimate that it would take about 2 work-hours per engine to perform the proposed actions, and that the average labor rate is $80 per work-hour. No parts are required, so parts would cost about $0. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $2,880.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Would not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–13917 (70 FR 680, January 5, 2005, and by adding a new airworthiness directive, to read as follows:

Rolls-Royce plc: Docket No. FAA–2009–0162; Directorate Identifier 2004–NE–19–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by May 1, 2009.

Affected ADs

(b) This AD supersedes AD 2004–26–05, Amendment 39–13917.

Applicability

(c) This AD applies to Rolls-Royce plc (RR) engine models RB211–524B–02, –524B2, –524B3, –524B4, –524C2, and –524D4 series engines that incorporate RR Service Bulletin (SB) No. RB.211–72–7221 or RR SB No. RB.211–72–7998 with front combustion liner assembly, part number (P/N) UL16078, UL16885, UL21441, UL24898, UL26916, UL27107, UL27108, UL27109, UL27875,

UL27876, UL28971, UL28972, UL28973, UL28974, UL28975, UL28976, UL28977, UL28978, UL28979, UL28980, UL28981, UL28982, or UL28983, installed but not incorporating RR SB No. RB.211–72–9670 or RR SB No. RB.211–72–9764, and engine models RB211–524G and –524H series engines with front combustion liner assembly P/N UL27659, UL23992, UL22988, UL37874, and UL37882, but not incorporating RR SB No. RB.211–72–9764. These engines are installed on, but not limited to, Boeing 747 and Lockheed L1011 series airplanes.

Unsafe Condition

(d) This AD results from an inquiry submitted by an operator which resulted in RR performing a complete review of the affected front combustion liner part numbers. We are issuing this AD to prevent deterioration of the engine combustion liner, which can result in combustion liner breakup, case burn-through, engine fire, and damage to the airplane.

Compliance

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

Credit for Previous Inspections

(f) Engine inspections previously made to RR Service Bulletin No. RB.211–72–B482, Revision 8, meet the requirements of this AD for the initial or repetitive inspections specified in paragraphs (f) through (f)(3) and (g) through (g)(3) of this AD.

Inspections of Combustion Liner Head Sections—Not Previously Repaired

(g) Borescope-inspect combustion liner head sections that have not been previously repaired. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR Alert Service Bulletin (ASB) No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the cycles-since-new (CSN), cycles-since-last inspection (CSLI), and cycles-in-service (CIS) compliance thresholds in Table 1 of this AD.

TABLE 1—COMBUSTION LINER HEAD SECTION—NOT PREVIOUSLY REPAIRED

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
(1) RB211–524C2, –524D4, –524G, and –524H.	Within 1,400 to 1,600 CSN	Within 200 CSLI	Within 100 CIS after the effective date of this AD.
(2) RB211–524B–02, –524B2, –524B3, and –524B4.	Within 3,000 to 3,200 CSN	Within 200 CSLI	Within 200 CIS after the effective date of this AD.

Inspections of Combustion Liner Head Sections—Previously Repaired Using RR Field Repair Scheme FRS5367/B

(h) Borescope-inspect combustion liner head sections previously repaired using RR Field Repair Scheme FRS5367/B. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the cycles-since-last repair (CSLR), CSLI, and CIS compliance thresholds in Table 2 of this AD.

TABLE 2—COMBUSTION LINER HEAD SECTION—PREVIOUSLY REPAIRED USING RR FIELD REPAIR SCHEME FRS5367/B

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
(1) RB211–524C2, –524D4, –524G, and –524H.	Within 1,800 to 2,200 CSLR	Within 400 CSLI	Within 200 CIS after the effective date of this AD.
(2) RB211–524B–02, –524B2, –524B3, and –524B4.	Within 3,000 to 3,200 CSLR	Within 400 CSLI	Within 200 CIS after the effective date of this AD.

Inspections of Combustion Liner Head Sections That Have Been Repaired But Did Not Use RR Field Repair Scheme FRS5367/B

(i) Borescope-inspect combustion liner head sections that have been repaired using a method other than RR Field Repair Scheme FRS5367/B. Use paragraphs 3.A.(1) through 3.A.(5) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the CSLR, CSLI, and CIS compliance thresholds in Table 3 of this AD.

TABLE 3—COMBUSTION LINER HEAD SECTION—REPAIRED, BUT DID NOT USE RR FIELD REPAIR SCHEME FRS5367/B

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
(1) RB211–524C2, –524D4, –524G, and –524H.	Within 500 to 700 CSLR	Within 200 CSLI	Within 100 CIS after the effective date of this AD.
(2) RB211–524B–02, –524B2, –524B3, and –524B4.	Within 2,000 to 2,200 CSLR	Within 200 CSLI	Within 200 CIS after the effective date of this AD.

(3) For an installed front combustion liner that is subject to RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, if the operator can confirm with the relevant overhaul base or repair vendor that the nicrobraze repair RR Field Repair Scheme FRS5367 has been applied to all 18 struts, then this is equivalent to compliance with RR Field Repair Scheme FRS5367/B.

(4) Head sections repaired by replacement of all 18 struts using RR Field Repair Scheme FRS6548 are considered as equivalent to fitting a new head section for inspection purposes.

Inspections of Meterpanel Assemblies—Not Repaired

(j) Borescope-inspect meterpanel assemblies that incorporate SB No. RB.211–72–7998, that have not been previously repaired. Use paragraphs 3.B.(1) through 3.B.(7) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the CSN, CSLI, and CIS compliance thresholds in Table 4 of this AD.

TABLE 4—METERPANEL ASSEMBLY—NOT REPAIRED

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
(1) RB211–524D4, –524G, and –524H.	Within 1,000 to 1,200 CSN	Within 400 CSLI	Within 50 CIS after the effective date of this AD.
(2) RB211–524D4, –524G, and –524H that have not used RB211–524H ratings at any time.	Within 1,800 to 2,000 CSN	Within 400 CSLI	Within 50 CIS after the effective date of this AD.

Inspections of Meterpanel Assemblies—Repaired

(k) Borescope–inspect meterpanel assemblies that incorporate SB No. RB.211–72–7998, that have been previously repaired. Use paragraphs 3.B.(1) through 3.B.(7) of the Accomplishment Instructions of RR ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003, and the CSLR, CSLI, and CIS compliance thresholds in Table 5 of this AD.

TABLE 5—METERPANEL ASSEMBLY—REPAIRED

Engine series	Initial inspection	Repetitive inspection	Parts exceeding initial inspection cycles
(1) RB211–524D4, –524G, and –524H.	Within 500 to 700 CSLR	Within 400 CSLI	Within 50 CIS after the effective date of this AD.

Reject Parts

(l) Replace parts that exceed the acceptance criteria. Information about the acceptance criteria can be found in the Aircraft Maintenance Manual, 72–00–00, Inspection/Check.

Mandatory Terminating Action

(m) Replace any front combustion liner assembly that has a P/N listed in paragraph (c) of this AD at the next shop visit, but no later than December 31, 2012.

(n) For RB211–524B02, –524B2, –524B3, –524B4, –524C2 and –524D4 engines, replacing the front combustion liner assembly with a front combustion liner assembly that incorporates the modifications in RR SB No. RB.211–72–9670, Original Issue, dated August 27, 1993; or RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, constitutes terminating action to the repetitive inspections in paragraphs (f), (g), (h), (i), and (j), of this AD.

(o) For RB211–524G and –524H engines, replacing the front combustion liner assembly with a front combustion liner assembly that incorporates the modifications in RR SB No. RB.211–72–9764, Revision 3, dated January 16, 1998, constitutes terminating action to the repetitive inspections in paragraphs (f), (g), (h), (i), and (j) of this AD.

Definition of Shop Visit

(p) For the purpose of this AD, a shop visit is any time that the 04 module is removed for refurbishment or overhaul.

Related Information

(q) Contact Ian Dargin, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *ian.dargin@faa.gov*; telephone (781) 238–7178; fax (781) 238–7199, for more information about this AD.

(r) Rolls-Royce ASB No. RB.211–72–AB482, Revision 9, dated July 28, 2003; SB No. RB.211–72–9764, Revision 3, dated January 16, 1998; and SB No. RB.211–72–9670, Original Issue, dated August 27, 1993, pertain to the subject of this AD. Contact Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; telephone: 011–44–1332–242424; fax: 011–44–1332–249936, for a copy of this service information.

Issued in Burlington, Massachusetts, on February 19, 2009.

Colleen M. D'Alessandro,

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

[FR Doc. E9–4317 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2009–0120; Airspace Docket No. 09–ACE–2]

Proposed Establishment of Class E Airspace; Rushville, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to establish Class E airspace at Rushville, NE. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Modisett Airport, Rushville, NE. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Modisett Airport.

DATES: 0901 UTC. Comments must be received on or before April 16, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2009–0120/Airspace Docket No. 09–ACE–2, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76193–0530; telephone: (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2009–0120/Airspace Docket No. 09–ACE–2.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/*.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), Part 71 by adding Class E airspace for SIAPs operations at Modisett Airport, Rushville, NE. The area would be depicted on appropriate aeronautical charts.

Class E airspace areas are published in Paragraph 6005 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 E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add controlled airspace at Modisett Airport, Rushville, NE.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

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

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; 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 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE NE E5 Rushville, NE [New]

Rushville, Modisett Airport, NE
(Lat. 42°44′12″ N., long. 102°26′40″ W.)

That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of Modisett Airport.

* * * * *

Issued in Fort Worth, TX on February 13, 2009.

Walter L. Tweedy,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–4353 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 306

Automotive Fuel Ratings, Certification and Posting

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Request for public comments.

SUMMARY: As part of the Commission's systematic review of all current FTC rules and guides, the Commission requests public comment on the overall costs, benefits, necessity, and regulatory and economic impact of the FTC's rule for ''Automotive Fuel Ratings, Certification and Posting'' (''Fuel Rating Rule'' or ''Rule'').

DATES: Written comments must be received by May 15, 2009.

ADDRESSES: Interested parties are invited to submit written comments electronically or in paper form. Comments should refer to ''Fuel Rating Rule Review, Matter No. R811005'' to facilitate the organization of comments. Please note that your comment—including your name and your state—will be placed on the public record of this proceeding, including on the publicly accessible FTC website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and Commission Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing

material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-fuelratingrulereview*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-fuelratingrulereview*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC website at *http://www.ftc.gov* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Fuel Rating Rule Review, Matter No. R811005'' reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex M), 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The Federal Trade Commission Act (''FTC Act'') and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

FOR FURTHER INFORMATION CONTACT: Matthew Wilshire, (202) 326-2976, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

The Fuel Rating Rule establishes standard procedures for determining, certifying, and posting, by means of a label on the fuel dispenser, the automotive fuel rating of liquid automotive fuels, including liquid alternative fuels. The Commission first promulgated the Rule (then titled the ''Octane Certification and Posting Rule'') in 1979 in accordance with the Petroleum Marketing Practices Act (''PMPA'') (15 U.S.C. 2821 *et seq.*). (44 FR 19160 (Mar. 30, 1979)). The Rule originally only applied to gasoline. In 1993, in response to amendments to the PMPA, the Commission expanded the scope of the Rule to cover liquid alternative fuels, including, but not limited to, methanol, denatured ethanol, liquefied natural gas, and coal-derived liquid fuels. (58 FR 41356 (Aug. 3, 1993)). In 2008, the Commission again amended the Rule to incorporate the specific labeling requirements for biodiesel, biomass-based diesel, and blends thereof (collectively, ''biodiesel fuels'') required by Section 205 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17021). (73 FR 40154 (July 11, 2008)).

The Fuel Rating Rule designates methods for rating, certifying, and posting the rating of automotive fuels at the point of sale. The Rule requires that refiners, importers, and producers of any liquid automotive fuel determine that fuel's ''automotive fuel rating'' before transferring it to a distributor or retailer. For gasoline, the fuel rating is the octane rating. For alternative fuels other than biodiesel fuels, the rating is the minimum percentage of the principal component of the fuel. For biodiesel fuels, it is the percentage of biodiesel or biomass-based diesel in the fuel. In addition, any covered entity, including a distributor, that transfers a fuel must provide a certification of the fuel's rating to the transferee either by including it in papers accompanying the transfer or by letter. Finally, the Rule requires retailers to post the fuel rating by adhering a label to the retail fuel pump. The Rule sets forth precise specifications regarding the content, size, color, and font of the labels.

II. Regulatory Review Program

The Commission reviews all current Commission rules and guides periodically. These reviews seek information about the costs and benefits of the Commission's rules and guides as well as their regulatory and economic impact. The information obtained assists the Commission in identifying rules and guides that warrant modification or rescission. Therefore, the Commission solicits comments on, among other things, the economic impact of, and the continuing need for, the Fuel Rating Rule; the benefits of the Rule to purchasers of automotive fuels; and the burdens the Rule places on firms subject to its requirements.

III. Request for Comment

The Commission solicits comments on the following specific questions related to the Fuel Rating Rule:

(1) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(2) What benefits has the Rule provided to consumers? What evidence supports the asserted benefits?

(3) What modifications, if any, should the Commission make to the Rule to increase its benefits to consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(4) What impact has the Rule had on the flow of truthful information to consumers and on the flow of deceptive information to consumers?

(5) What significant costs has the Rule imposed on consumers? What evidence supports the asserted costs?

(6) What modifications, if any, should be made to the Rule to reduce the costs imposed on consumers?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses, particularly small businesses?

(7) Please provide any evidence that has become available since 1993

[1] FTC Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

concerning consumer perception of fuel rating labels. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(8) Please provide any evidence that has become available since 1993 concerning consumer interest in particular fuel rating issues. Does this new information indicate that the Rule should be modified? If so, why, and how? If not, why not?

(9) What benefits, if any, has the Rule provided to businesses, and in particular to small businesses? What evidence supports the asserted benefits?

(10) What modifications, if any, should be made to the Rule to increase its benefits to businesses, and particularly to small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(11) What significant costs, including costs of compliance, has the Rule imposed on businesses, particularly small businesses? What evidence supports the asserted costs?

(12) What modifications, if any, should be made to the Rule to reduce the costs imposed on businesses, and particularly on small businesses?

(a) What evidence supports your proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers?

(c) How would these modifications affect the costs and benefits of the Rule for businesses?

(13) What evidence is available concerning the degree of industry compliance with the Rule? Does this evidence indicate that the Rule should be modified? If so, why, and how? If not, why not?

(14) Are any of the Rule's requirements no longer needed? If so, explain. Please provide supporting evidence.

(15) What potentially unfair or deceptive practices concerning the rating, certifying, and posting of the rating of automotive fuels, if any, are not covered by the Rule?

(a) What evidence demonstrates the existence of such practices?

(b) With reference to such practices, should the Rule be modified? If so, why, and how? If not, why not?

(16) What modifications, if any, should be made to the Rule to account for changes in relevant technology, including development of new liquid alternative fuels, or economic conditions?

(a) What evidence supports the proposed modifications?

(b) How would these modifications affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

(17) Does the Rule overlap or conflict with other federal, state, or local laws or regulations? If so, how?

(a) What evidence supports the asserted conflicts?

(b) With reference to the asserted conflicts, should the Rule be modified? If so, why, and how? If not, why not?

(c) Is there evidence concerning whether the Rule has assisted in promoting national consistency with respect to the rating, certifying, and posting the rating of automotive fuels? If so, please provide that evidence.

(18) Are there foreign or international laws, regulations, or standards with respect to the rating, certifying, and posting the rating of automotive fuels that the Commission should consider as it reviews the Rule? If so, what are they?

(a) Should the Rule be modified in order to harmonize with these foreign or international laws, regulations, or standards? If so, why, and how? If not, why not?

(b) How would such harmonization affect the costs and benefits of the Rule for consumers and businesses, particularly small businesses?

List of Subjects in 16 CFR Part 306

Fuel ratings, Trade practices.

Authority: 15 U.S.C. 2801 *et seq*; 42 U.S.C. 17021

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–4282 Filed 2–27–09: 8:45 am]

BILLING CODE 6750–01–S

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1635

RIN 3046–AA84

Regulations Under the Genetic Information Nondiscrimination Act of 2008

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing a proposed rule that would implement Title II of the Genetic Information Nondiscrimination Act of 2008 (''GINA''). Congress enacted Title II of GINA to protect job applicants, current and former employees, labor union members, and apprentices and trainees from discrimination based on their genetic information. Title II of GINA requires the EEOC to issue implementing regulations. The Commission is proposing these rules under that authority to provide all persons subject to Title II of GINA additional guidance with regard to the law's requirements. The Commission invites written comments from members of the public on these proposed rules and on any specific issues related to this proposal.

DATES: Comments regarding this proposal must be received by the Commission on or before May 1, 2009. Please see the section below entitled **ADDRESSES** and **SUPPLEMENTARY INFORMATION** for additional information on submitting comments.

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

By mail to Stephen Llewellyn, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 131 M Street, NE., Suite 6NE03F, 20507.

By facsimile (''FAX'') machine to (202) 663–4114. (There is no toll free FAX number.) Only comments of six or fewer pages will be accepted via FAX transmittal, in order to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4070 (voice) or (202) 663–4074 (TTY). (These are not toll free numbers.)

By the Federal eRulemaking Portal: *http://www.regulations.gov*. After accessing this Web site, follow its instructions for submitting comments.

Instructions: All comment submissions must include the agency name and docket number or the Regulatory Information Number (RIN) for this rulemaking. Comments need be submitted in only one of the above-listed formats, not all three. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information you provide. Copies of the received comments also will be available for inspection in the EEOC Library, FOIA Reading Room, by advanced appointment only, from 9 a.m. to 5 p.m., Monday through Friday except legal holidays, from March 2, 2009 until the Commission publishes the rule in final form. Persons who schedule an appointment in the EEOC Library, FOIA Reading Room, and need

assistance to view the comments will be provided with appropriate aids upon request, such as readers or print magnifiers. To schedule an appointment to inspect the comments at the EEOC Library, FOIA Reading Room, contact the EEOC Library by calling (202) 663–4630 (voice) or (202) 663–4641 (TTY). (These are not toll free numbers.)

FOR FURTHER INFORMATION CONTACT: Christopher J. Kuczynski, Assistant Legal Counsel, or Kerry E. Leibig, Senior Attorney Advisor, at (202) 663–4638 (voice) or (202) 663–7026 (TTY). (These are not toll free numbers.) This notice also is available in the following formats: large print, Braille, audio tape, and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Information Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

On May 21, 2008, President Bush signed the Genetic Information Nondiscrimination Act of 2008 (''GINA''), Pub. L. 110–233, 122 Stat. 881, codified at 42 U.S.C. 2000ff *et seq.* into law. Congress enacted GINA in recognition of, among many achievements in the field of genetics, the decoding of the human genome and the creation and increased use of genomic medicine. As Congress noted, ''New knowledge about genetics may allow for the development of better therapies that are more effective against disease or have fewer side effects than current treatments. These advances give rise to the potential misuse of genetic information to discriminate in health insurance and employment.'' GINA Section 2(1), 42 U.S.C. 2000ff, note. Experts predict that the twenty-first century will see tremendous strides in the new field of genomic medicine, bringing it into mainstream medical practice. The National Human Genome Research Institute, the institute within the National Institutes of Health responsible for the mapping of the human genome, notes that ''by identifying the genetic factors associated with disease, researchers may be able to design more effective drugs; to prescribe the best treatment for each patient; to identify and monitor individuals at high risk from disease; and to avoid adverse drug reactions.'' NHGRI, The Future of Genomic Medicine: Policy Implications for Research and Medicine (Bethesda, Md., Nov. 16, 2005), *available at http://www.genome.gov/17516574* (last visited July 16, 2008).

Many genetic tests now exist that can inform individuals whether they may be at risk for developing a specific disease or disorder. But just as the number of genetic tests increase, so do the concerns of the general public about whether they may be at risk of losing access to health coverage or employment if insurers or employers have their genetic information. Congress enacted GINA to address these concerns, by prohibiting discrimination based on genetic information and restricting acquisition and disclosure of such information, so that the general public would not fear adverse employment- or health coverage-related consequences for having a genetic test or participating in research studies that examine genetic information. Scientific advances require significant cooperation and participation from among members of the general public. In the absence of such participation, geneticists and other scientists would be hampered in their research, and efforts to develop new medicines and treatments for genetic diseases and disorders would be slowed or stymied.

GINA Title I applies to group health plans sponsored by private employers, unions, and state and local government employers; issuers in the group and individual health insurance markets; and issuers of Medicare supplemental (Medigap) insurance.[1] Title I generally prohibits discrimination in group premiums based on genetic information and the use of genetic information as a basis for determining eligibility or setting premiums in the individual and Medigap insurance markets, and places limitations on genetic testing and the collection of genetic information in group health plan coverage, the individual insurance market, and the Medigap insurance market. Title I also provides a clarification with respect to the treatment of genetic information under privacy regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Title II of GINA prohibits use of genetic information in the employment context, restricts the deliberate acquisition of genetic information by employers and other entities covered by Title II, and strictly limits such entities from disclosing genetic information. The law incorporates by reference many of the familiar definitions, remedies, and procedures from Title VII of the Civil Rights Act of 1964, as amended, and other statutes protecting federal, state, and Congressional employees from discrimination.[2]

Summary of the Proposed Regulation

GINA section 211, 42 U.S.C. 2000ff–10, requires the EEOC to issue regulations implementing Title II of the Act within one year of its enactment. The Commission is issuing this proposed rule in compliance with this requirement and pursuant to the Administrative Procedures Act, 5 U.S.C. 553. The Commission seeks public comment on the proposed rule, the discussion in this preamble, and other Title II issues not addressed in either document.

The report for the bill introduced into the Senate in 2007 noted that ''[a]s a guiding principle, [GINA] is designed to extend to individuals in the area of genetic discrimination the same procedures and remedies as are provided under Title VII of the Civil Rights Act of 1964, as amended [(''Title VII'')].'' S. Rep. No. 110–48 at 27. Although the Senate and House modified the bill between its initial introduction and final passage, the idea of extending Title VII protections to applicants and employees in the area of genetic information did not change.

In developing this proposed regulation, the Commission closely followed the terms of the statute. The Commission's goal is to implement the various provisions of Title II consistent with Congress's intent, to provide some additional clarification of those provisions, and to explain more fully those sections where Congress incorporated by reference provisions from other statutes. For example, where GINA section 201(2)(A)(i) defines *employee* by reference to Title VII of the Civil Rights Act of 1964 and other statutes, this proposed regulation expands on that reference by importing language from these statutes so that those using the proposed regulation need not refer to other sources when determining the scope of GINA's coverage.[3]

The Commission also recognizes that Title II of GINA includes terms that are outside the areas of its expertise. In particular, the definition of ''genetic

[1] These regulations do not interpret the requirements of GINA Title I relating to genetic nondiscrimination in health coverage. Those requirements are administered by the Departments of Health and Human Services, Labor, and the Treasury.

[2] Currently, Executive Order 13145 prohibits federal executive branch agencies from discriminating against applicants and employees on the basis of genetic information and limits access to and use of genetic information. Upon its effective date in November 2009, GINA will protect federal employees from genetic discrimination.

[3] Unless otherwise noted, use of the term ''GINA'' means ''Title II of GINA.'' When needed for clarity, the preamble will refer to Title I of GINA or Title II of GINA.

test'' refers to ''analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.'' None of these terms are common to employment discrimination law. For this reason, Commission staff sought and obtained technical assistance from the National Human Genome Research Institute, the institute within the National Institutes of Health responsible for decoding the human genome and for developing technologies applicable to the study of the genetic components of complex disorders.

The Commission also coordinated with the Departments of Labor (DOL), Health and Human Services (HHS), and the Treasury, which have responsibility for issuing regulations applicable to GINA Title I. In particular, DOL, HHS (the Centers for Medicare & Medicaid Services) and the Treasury (the Internal Revenue Service) are responsible for issuing regulations applicable to GINA sections 101–103. The HHS Office for Civil Rights is responsible for issuing the regulations applicable to GINA section 105. The National Association of Insurance Commissioners has issued conforming model regulations relating to section 104. Among the various Title II provisions are several that address the relationship between Title I and Title II, and the relationship between Title II and several statutes that the Departments enforce, including the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act, the Internal Revenue Code, and HIPAA.

Section-by-Section Analysis of the Regulation

Section 1635.1 Purpose

In this section, the Commission sets forth the general purposes of GINA. Title II of GINA restricts the deliberate acquisition of genetic information by covered entities, prohibits use of genetic information in employment decision-making, requires that genetic information be kept confidential (which includes maintaining written genetic information that exists in paper or electronic form as a confidential medical record), and places strict limits on disclosure of genetic information.

Section 1635.2 Definitions—General

The Commission reiterates the definitions set forth in GINA section 201, many of which come from Title VII of the Civil Rights Act of 1964. However, where the statute merely incorporates by reference different categories of covered employees, the proposed regulation describes more fully the employees GINA protects. Moreover, GINA specifically provides that the term ''employee'' includes applicants, *see* 42 U.S.C. 2000ff–1(a)(1), and the Supreme Court has held that the term ''employee'' under Title VII includes former employees. *See Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 346 (1997). Accordingly, the proposed regulation makes clear that the term ''employee'' includes an applicant and a former employee. Similarly, the proposed regulation provides a concise explanation of the employers covered by GINA, rather than following the statute's example of providing citations to definitions of ''employer'' provided by other laws. For example, the proposed regulation explains that Indian tribes, as well as bona fide private clubs (other than labor organizations) that are exempt from taxation under section 501(c) of the Internal Revenue Code of 1986, are not employers, rather than merely referring to Title VII's exclusion of these groups from the definition of ''employer.'' *See* 42 U.S.C. 2000e(b)(1) and (2).

The proposed regulation includes a definition of ''covered entity.'' This proposed regulation uses the term to refer to all entities subject to Title II of GINA: The different categories of GINA-covered employers (private sector, state and local government, Congressional employers, executive branch, federal/civil service), as well as employment agencies, labor organizations, and joint labor-management training and apprenticeship programs. The proposed regulation uses the term ''covered entity'' when describing the requirements or prohibited practices applicable to all entities subject to Title II of GINA, thus avoiding some of the repetition found in sections 202–205 of the statute. This use of the term ''covered entity'' as a simplifying shorthand to aid in the readability of the proposed regulation is similar to EEOC's use of ''covered entity'' in the regulation implementing Title I of the Americans with Disabilities Act, 42 U.S.C. 12111 (ADA). The term ''covered entity'' in this proposed regulation is not intended to be synonymous with use of the same term in Title I of GINA, in regulations implementing Title I of GINA or HIPAA, or in section 206(c) of GINA (which specifically refers to HIPAA covered entities).

The proposed regulation says that the term ''covered entity'' includes an ''employing office.'' The term ''employing office,'' referenced in sections 201 and 207 of GINA, is used in the Congressional Accountability Act, which protects employees in the legislative branch. *See* 2 U.S.C. 1301(9). Although the EEOC has no enforcement authority under the Congressional Accountability Act, as the only agency with authority to issue regulations under Title II of GINA, we believe that referencing that law in this proposed regulation is appropriate to put employees in the legislative branch and covered employing offices on notice of their rights and responsibilities under GINA.

Section 1635.3 Definitions Specific to GINA

GINA includes six terms not found in any of the other employment discrimination statutes that the Commission enforces. This proposed regulation provides some additional guidance regarding these terms, and EEOC seeks comment both as to what is, and is not, included in this preamble or in the text of the proposed regulation. The Commission notes that DOL, HHS, and the Treasury have published a Request for Information (RFI) under GINA Title I. *See* 73 FR 60208 (October 10, 2008). All comments submitted under this proposed rule and the RFI are being shared among the Federal Agencies.

Section 1635.3(a) Family Member

The statute defines an individual's ''family member'' both by reference to ERISA section 701(f)(2) and as extending to the individual's fourth degree relatives. First, section 201(3)(a) of GINA states that family member is defined as ''a dependent (as that term is used for purposes of section [701(f)(2) of ERISA]'' of the individual. For purposes of Title II, the Commission has determined that the dependents covered by Title II are limited to persons who are or become related to an individual through marriage, birth, adoption, or placement for adoption.[4]

Second, GINA includes as family members persons related from the first to the fourth degree of an individual. The degree of relationship, which reflects the average proportion of genes in common between two individuals, is determined by counting generational levels separating them. The GINA

[4] The Commission's definition of ''dependent'' is solely for purposes of interpreting Title II of GINA, and is not relevant to interpreting the term ''dependent'' under Title I of GINA or under section 701(f)(2) of ERISA and the parallel provisions of the Public Health Service Act and the Internal Revenue Code. The Commission believes its interpretation of the term ''family member,'' particularly the way in which GINA's reference to section 701(f)(2) of ERISA relates to that term, is consistent with the plain language of both section 701(f)(2) and Title II of GINA, furthers Congress's intent to prohibit genetic discrimination in the employment context, and provides covered entities with clear standards governing compliance with the law.

provisions thus include the individual's children, siblings, and parents (first degree) and extend to great-great grandparents and first cousins once removed (the children of a first cousin), as well as family members who are in between the individual and these persons (including parents, siblings, half-siblings, nieces, nephews, grandparents, great grandparents, aunts, uncles, great aunts and uncles, and first cousins).

Section 1635.3(b) Family Medical History

The proposed regulation includes a definition of ''family medical history'' because it is a term used in the statute's discussion of prohibited employment practices, but it is not specifically defined by the statute. In the legislative history of GINA, Congress stated that the term ''family medical history [should] be understood as it is used by medical professionals when treating or examining patients.'' S. Rep. No. 110–48, at 16. In particular, the Senate Report notes as follows:

> [T]he American Medical Association (AMA) has developed an adult family history form as a tool to aid the physician and patient to rule out a condition that may have developed later in life, which may or may not have been inherited. This form requests information about the patient's brothers, sisters, and their children, biological mother, the mother's brothers, sisters, and their children, maternal grandfather, maternal grandmother, biological father, the father's brothers, sisters, and their children, paternal grandfather and paternal grandmother. The committee expects that the use of ''family history'' in this bill will evolve with the medical profession and the tools it develops in this area.

Id. The Report further notes that ''a family medical history could be used as a surrogate for a genetic trait,'' *id.,* and that the definition of ''genetic information'' had to include ''family medical history'' to prevent a covered entity from making decisions about an individual's health based on the existence of an inheritable disease of a family member. *See also id.* at 28 (reiterating the Title I discussion of family medical history in the Report section addressing Title II).[5]

[5] Since 2004 the U.S. Surgeon General's Family History Initiative has actively promoted the collection and use of family history information in clinical settings, including featuring a bilingual Web-based tool through which the user creates and organizes his/her family health history (*http://www.hhs.gov/familyhistory/*). GINA is not intended to limit the collection of family medical history by health care professionals for diagnostic or treatment purposes.

Section 1635.3(c) Genetic Information

GINA section 201(4) and the proposed regulation define genetic information to include information from genetic tests, the genetic tests of family members, family medical history, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services. Genetic information also includes information about an individual's or family member's request for or receipt of genetic services. The statute and proposed regulation exclude from coverage information about an individual's or family member's age or gender.

Section 1635.3(d) Genetic Monitoring

Genetic monitoring is defined in GINA section 201(5) as the ''periodic examination of employees to evaluate acquired modifications to their genetic material * * * caused by the toxic substances they use or are exposed to in performing their jobs.'' The proposed regulation uses language similar to that found in the statute in defining the term. As more fully described in 1635.8(b)(5) and its accompanying Preamble discussion, a covered entity may acquire genetic information as part of genetic monitoring that is either required by law or voluntarily undertaken, provided the entity complies strictly with certain conditions.

Section 1635.3(e) Genetic Services

The term ''genetic services'' is defined in GINA section 201(6). It includes genetic tests, genetic counseling, and genetic education. Making an employment decision based on knowledge that an individual has received genetic services violates GINA, even if the covered entity is unaware of the specific nature of the genetic services received or the specific information exchanged in the course of providing them.

Section 1635.3(f) Genetic Test

GINA section 201(7) defines ''genetic test'' to mean the ''analysis of human DNA, RNA, chromosomes, proteins, or metabolites, that detects genotypes, mutations, or chromosomal changes.'' Genetic tests are used to detect gene variants associated with a specific disease or condition. For example, tests to determine whether an individual carries the genetic variant evidencing a predisposition to breast cancer—whether the individual has the BRCA1 or BRCA2 variant—or to determine whether an individual has a genetic variant associated with hereditary nonpolyposis colorectal cancer are genetic tests. It is important to note, however, that the presence of a genetic variant relating to a predisposition to disease is not evidence of, and does not equate to, disease. Similarly, a positive test for a genetic variant as strongly penetrant as Huntington's Disease does not equate to the presence of the disease, even though development of the disease is almost inevitable.

The Commission invites comments on the scope of the term ''genetic test.'' The proposed regulation includes two examples of tests that are not genetic: a test for the presence of a virus that is not composed of human DNA, RNA, chromosomes, proteins, or metabolites and a test for drug or alcohol use. Another example of what is not a genetic test and might be mentioned, either in the text of the regulation or in the final preamble, is a test for infectious and communicable diseases that may be transmitted through food handling, which, the Commission believes, is not covered by the definition of ''genetic test.'' Similarly, routine tests such as complete blood counts, cholesterol tests, and liver-function tests would not be protected under GINA. We seek comment as to how the term should be applied, whether the proposed regulation should be more or less expansive, and whether it or the preamble should provide examples of what should be included or excluded.

The Commission further notes that the Title II definition of ''genetic test'' differs from the definition of this term in Title I. Specifically, the Title II definition of ''genetic test'' does not have the express exclusion that Title I does for ''an analysis of proteins or metabolites that is directly related to a manifested disease, disorder, or pathological condition that could reasonably be detected by a health care professional with appropriate training and expertise in the field of medicine involved.'' GINA 101(d), 29 U.S.C. 1191b–(d)(7)(B). Title II does not require this language of exclusion because Congress determined that these uses ''are not applicable in the employment context.'' S. Rep. No. 110–48 at 28. However, as explained below, the Commission borrowed from Title I's use of the term ''manifest'' in the definition of ''genetic test'' in formulating a definition of ''manifested or manifestation.''

Section 1635.3(g) Manifestation or Manifested

We have added a definition of ''manifestation or manifested'' to the proposed regulation, because sections

201(4)(A)(iii) and 210 use the terms. Specifically, GINA section 201(4)(A)(iii), defining ''genetic information,'' refers to the ''manifestation of a disease or disorder in family members'' of an individual, and section 210, entitled ''Medical information that is not genetic information,'' refers to a ''manifested disease, disorder, or pathological condition.'' The definition of ''manifestation or manifested'' was developed with the assistance of the National Human Genome Research Institute, an Institute within the National Institutes of Health. The proposed regulation defines ''manifestation or manifested'' to mean, with respect to a disease, disorder, or pathological condition:

> That an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this part, a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information or on the results of one or more genetic tests.

This understanding of the term ''manifested'' is consistent both with the definition of genetic test found in Title I, which permits use of certain diagnostic tests in order to determine whether an individual has a current—or manifest—disease, disorder, or condition, *see id.* at 16, and with the notion, discussed above in conjunction with the definition of genetic test (section 1635.3(f)), that the mere presence of a genetic variant does not mean that an individual has an associated condition, disease, or disorder. The presence of a genetic variant alone does not constitute a diagnosis; other signs or symptoms must be present. This interpretation is consistent with current ERISA regulations which prohibit a group health plan, and a health insurance issuer offering group health insurance coverage, from imposing a preexisting condition exclusion relating to a condition based solely on genetic information. However, if an individual is diagnosed with a condition, even if the condition relates to genetic information, the plan may impose a preexisting condition exclusion with respect to the condition, subject to other HIPAA portability requirements. *See* 29 CFR 2590.701–3(b)(6)(i). Thus, for example, a woman who has group health plan coverage and has the BRCA1 gene variant may not be subject to a preexisting condition exclusion merely because she has the variant. *Id.* Example at 2590.703(b)(6)(ii).

Similarly, Huntington's disease (HD) is an example of a genetic disease that is not diagnosed solely through use of a genetic test; other signs and symptoms must be present. The presence of the genetic variant virtually guarantees the later development of disease, but the disease does not usually manifest until adulthood. Therefore, even when a genetic variant is 100 percent predictive for development of disease, the presence of the variant does not by itself equal diagnosis of the disease.

Section 1635.4 Prohibited Practices—In General

In describing the prohibited practices under GINA Title II, Congress adopted language similar to that used in Title VII and other equal employment statutes, evincing its intent to prohibit discrimination with respect to a wide range of covered entity practices, including hiring, promotion and demotion, seniority, discipline, termination, compensation, and the terms, conditions, and privileges of employment. In separate GINA sections 203–205, the statute notes additional covered actions of employment agencies (failing or refusing to refer for employment), labor unions (excluding or expelling from membership), and training, retraining, and apprenticeship programs (denying admission to or employment in such programs).

Section 1635.5 Limiting, Segregating, and Classifying

The proposed regulation reiterates the statutory language barring actions by covered entities that may limit, segregate, or classify employees because of genetic information. For example, an employer could not reassign someone whom it learned had a family medical history of heart disease from a job it believed would be too stressful and might eventually lead to heart-related problems for the employee. This section also makes clear that although the language of the statute specifically prohibits actions that have the ''purpose or effect'' of limiting, segregating, or classifying individuals on the basis of genetic information, neither the statute nor the proposed regulation creates a cause of action for disparate impact. Section 208 of GINA specifically prohibits such actions, and establishes the Genetic Non-Discrimination Study Commission, to examine ''the developing science of genetics'' and recommend to Congress ''whether to provide a disparate impact cause of action under this Act.'' The proposed regulation does not address the establishment of this Commission, which is scheduled to begin its work on May 21, 2014.

Section 1635.6 Causing an Employer To Discriminate

GINA sections 203(c), 204(c), and 205(d) expressly bar employment agencies, labor organizations, and apprenticeship or other training programs from causing an employer to discriminate on the basis of genetic information. These sections recognize that employers engage in most of the employment-related activities that the Act reaches. Other covered entities, however, might engage in conduct that could cause an employer to discriminate. For example, an employment agency or union might share or attempt to share genetic information it obtained (whether legally or not) about a client or member with an employer in an effort to affect the individual's employment prospects. Such conduct would violate sections 203(c) and 204(c).

Although section 202 does not include a similar provision explicitly prohibiting an employer from causing another covered entity to discriminate, it is well settled under Title VII that the definition of employer includes employers' agents under common law agency principles. *See Vinson* v. *Meritor Savings Bank,* 477 U.S. 57, 72 (1986). Because GINA incorporates Title VII's definition of employer, including the application of common law agency principles, GINA would bar an employer from engaging in actions that would cause another covered entity acting as its agent to discriminate. For example, an employer that directed an employment agency to ask applicants for genetic information or told the employment agency not to send it candidates with a family medical history for certain conditions would violate GINA. An employment agency that acted pursuant to the employer's direction would be liable for violating GINA either directly, because the law applies to employment agencies, or as an agent of the employer. Similarly, an employer would violate GINA if it used a labor organization's hiring hall to obtain genetic information in making job referrals, and the labor union would be liable under GINA either directly or as the employer's agent.

Section 1635.7 Retaliation

The proposed regulation reiterates the statutory prohibition against retaliation where an individual opposes any act made unlawful by GINA, files a charge of discrimination or assists another in doing so, or gives testimony in connection with a charge. Because

Congress adopted in GINA the language of the anti-retaliation provision in Title VII of the Civil Rights Act of 1964, the Commission believes that Congress intended the standard for determining what constitutes retaliatory conduct under GINA to be the same as the standard under Title VII, as announced by the Supreme Court in *Burlington Northern & Santa Fe Ry.* v. *White,* 548 U.S. 53 (2006). In that case, the Court held that Title VII's anti-retaliation provision protects an individual from conduct, whether related to employment or not, that a reasonable person would have found ''materially adverse,'' meaning that the action ''well might have 'dissuaded a reasonable worker from making or supporting a charge of discrimination.' '' *Id.* at 57–58 (citations omitted).

Section 1635.8 Acquisition of Genetic Information

Each of the discrete GINA sections addressing the conduct of employers, employment agencies, labor organizations, and apprenticeship or other training programs includes a section prohibiting covered entities from requesting genetic information from applicants, employees or other individuals; from requiring that applicants or employees provide genetic information; or from purchasing genetic information about an applicant or employee. Each section also includes the same five exceptions. Sections 202, covering employers, and 205 covering joint labor-management training and apprenticeship programs, include a sixth exception. The proposed regulation addresses each of the exceptions. Covered entities are cautioned, however, that the use of genetic information to discriminate, no matter how that information may have been acquired, is prohibited.

Inadvertently Requesting or Requiring Genetic Information: First, a covered entity that ''inadvertently requests or requires family medical history'' from an individual does not violate GINA. Congress intended this exception to address what it called the '' 'water cooler problem' in which an employer unwittingly receives otherwise prohibited genetic information in the form of family medical history through casual conversations with an employee or by overhearing conversations among co-workers.'' S. Rep. No. 110–48, at 29; *see also* H.R. Comm. on Education and Labor, Genetic Information Nondiscrimination Act of 2007, H.R. Rep. No. 110–28 part I, 37–38 (2008) (H.R. Rep. No. 110–28, part I). Congress did not want casual conversation among co-workers regarding health to trigger federal litigation whenever someone mentioned something that might constitute protected family medical history. The Commission's proposed regulation thus notes that a covered entity inadvertently acquires family medical history where a manager or supervisor overhears a conversation among co-workers that includes information about family medical history (e.g., a conversation in which one employee tells another that her father has Alzheimer's Disease), or receives an unsolicited e-mail message from a co-worker that includes genetic information.

Although the language of this exception in GINA specifically refers to family medical history, the Commission believes that it is consistent with Congress's intent to extend the exception to any genetic information that an employer inadvertently acquires. The Commission does not believe, for example, that Congress intended that an employer would be liable for the acquisition of genetic information because it overhears a conversation in which one employee tells another that her mother had a genetic test to determine whether she was at increased risk of getting breast cancer. If the exception were read to cover only family medical history, this type of acquisition of genetic information would violate GINA, even though it occurred inadvertently, because information that a family member has had a genetic test, while genetic information, is not information about the occurrence of a disease or disorder in a family member.

The Commission also understands this exception to apply in any situation in which an employer might inadvertently acquire genetic information, not just situations involving conversations between co-workers that are overheard. The proposed regulation provides an illustrative list of situations where we believe the acquisition comes within Congress's intent. Thus, for example, the exception applies when the covered entity, acting through a supervisor or other official, receives family medical history directly from an individual following a general health inquiry (e.g., ''How are you?'') or a question as to whether the individual has a manifested condition. Similarly, a casual question between colleagues, or between a supervisor and supervisee, concerning the health of a parent or child would not violate GINA (e.g., ''How's your son feeling today?'').

A covered entity that asks for family medical history or other genetic information as part of an inquiry or medical examination related to an applicant's or employee's manifested disease, disorder, or pathological condition will not be considered to have acquired such information inadvertently. Thus, even though the ADA allows an employer to require a medical examination of all employees to whom it has offered a particular job, for example, to determine whether they have heart disease that would affect their ability to perform a physically demanding job, GINA would prohibit inquiries about family medical history of heart disease as part of such an examination. Such a limitation will not affect an employer's ability to use a post-offer medical examination for the limited purpose of determining an applicant's current ability to perform a job.

Covered entities should ensure that any medical inquiries they make or any medical examinations they require are modified so as to comply with the requirements of GINA. In particular, we note that at present, the ADA permits employers to obtain medical information, including genetic information, from post-offer job applicants. As we interpret GINA, this will change on the November 21, 2009 effective date of Title II of GINA: Employers no longer will be permitted to obtain *any* genetic information, including family medical history, from post-offer applicants. Employers will likewise be prohibited from obtaining this type of information through any type of medical examination required of employees for the purpose of determining continuing fitness for duty.

However, Title II of GINA will not apply to information obtained by a health care professional in the course of a medical examination, diagnosis, or treatment unrelated to a determination of fitness for duty, except to the extent the information is obtained as part of an employer-provided voluntary wellness program subject to 1635.8(b)(2) of this proposed rule. For example, a doctor working at a hospital may ask for family medical history from a hospital employee who requests a medical examination. *See* 29 CFR 1635.8(b)(2) (allowing collection of genetic information, under certain specified conditions, when an employer offers health or genetic services as part of a voluntary wellness program).

The proposed regulation notes that when a covered entity seeks information from an individual who requests a reasonable accommodation under the ADA or other state or local law, the acquisition of genetic information as part of the documentation that the individual provides in support of the

request is considered inadvertent, as long as the request for documentation was lawful (e.g., was not overly broad). For information on the type of medical information an employer may lawfully request in connection with a request for reasonable accommodation see EEOC's *Enforcement Guidance on Reasonable Accommodation and Undue Hardship Under the Americans with Disabilities Act,* EEOC Notice No. 915.002 (Oct. 17, 2002), *available at http://www.eeoc.gov/policy/docs/accommodation.html.* We note that GINA's prohibition on requesting, requiring, or purchasing genetic information would control during the interactive process used to determine an appropriate reasonable accommodation. The Commission knows of no reason why a covered entity would need to request genetic information to determine an individual's current physical or mental limitations and whether those limitations can be accommodated.

The Commission further recognizes that other federal, state, or local laws may allow covered entities to obtain medical information about employees (other than genetic information). The proposed regulation makes it clear that a covered entity that inadvertently receives genetic information in response to a lawful request for medical information under such a law would not violate GINA, including, for example, where a covered entity received genetic information in connection with the FMLA's employee return to work certification requirements.

The Commission believes that the first exception to the general prohibition of requesting, requiring, or purchasing genetic information should also apply when an individual requests leave pursuant to a leave policy independent of a federal, state, or local leave or disability law, unless the covered entity's request was overbroad. For example, a request for an employee's entire medical record or the entire medical record related to a particular impairment is likely to include family medical history. An employer who receives family medical history or other genetic information in response to such a broad request would violate GINA. For information on the appropriate scope of inquiries in response to requests for leave (other than as a reasonable accommodation), *see* EEOC's *Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act,* 8 Fair Empl. Prac. Man. (BNA) 405:7701, Questions 15–17 (July 27, 2000) (''Enforcement Guidance''), *available at http://www.eeoc.gov/policy/docs/guidance-inquiries.html.*

In addition to complying with relevant EEOC guidance, covered entities may wish to take proactive measures to avoid even the inadvertent acquisition of genetic information. For example, as a best practice, an employer that asks an employee to have a health care professional provide documentation about a disability in support of a request for accommodation could specifically indicate on a questionnaire provided for this purpose that family medical history or other genetic information about the employee should not be provided.

Health or Genetic Services: Second, GINA permits covered entities to offer health or genetic services, and notes that a covered entity that meets specific requirements may offer such services as a part of a wellness program. The proposed regulation reiterates the statutory provision, but further notes that a wellness program seeking medical information must be voluntary, which is a requirement set forth in the ADA. The Commission notes that according to the Enforcement Guidance, a wellness program is voluntary ''as long as an employer neither requires participation nor penalizes employees who do not participate. *Id.,* Question 22. The Commission has not further addressed how the term ''voluntary'' should be defined for purposes of the ADA's application to wellness programs. We invite comments regarding the scope of this term.

The proposed regulation lists the specific requirements in the statute as prerequisites to the acquisition of genetic information when providing genetic services: A request in writing and in language reasonably likely to be understood by the individual from whom the information is sought; a description of the information being requested; and a description of the safeguards in place to protect against unlawful disclosure. The proposed regulation states that individually identifiable information may be provided only to the individual from whom it was obtained and that covered entities are entitled only to receive information in aggregate terms that do not disclose the identity of specific individuals. Although not stated in the proposed regulation, a covered entity that receives ''aggregate'' information may still violate GINA where the small number of participants, alone or in conjunction with other factors, makes an individual's genetic information readily identifiable.

The Commission notes that although this provision permits covered entities to implement wellness programs that seek family medical history voluntarily, other provisions in GINA Title I place strict limits on the genetic information that group health plans may request or require from covered individuals. In this regard, the Commission further notes that DOL, HHS and the Treasury are responsible for addressing the limitations on group health plans and insurance issuers under Title I. Covered entities that sponsor, establish, or maintain group health plans that implement wellness programs or other health-related services are cautioned to consider carefully whatever limitations these Departments place on group health plans with respect to the acquisition of genetic information.

The Commission also notes that Congress made clear at section 206(c) that GINA's Title II provisions are not to be construed to interfere with or otherwise apply to uses and disclosures of health information that are governed by the privacy regulations promulgated pursuant to HIPAA (''the HIPAA Privacy Rule''). As discussed below, the proposed rule implements this general statutory provision at proposed 1635.11(d) by excluding from coverage genetic information that is health information otherwise protected by the HIPAA Privacy Rule. Consistent with proposed 1635.11(d), the Commission further notes that nothing in section 1635.8 should be read as applying to or otherwise restricting the use or disclosure of genetic information that is protected health information subject to the HIPAA Privacy Rule. Thus, where a health care provider covered by the HIPAA Privacy Rule is providing health or genetic services, that provider is subject to the requirements of the HIPAA Privacy Rule with regard to uses and disclosures of protected health information, including HIPAA's conditions on disclosures to employers, and not this proposed regulation's provisions.

Family and Medical Leave Act: Third, GINA recognizes that individuals requesting leave under the Family and Medical Leave Act (FMLA) or similar state or local law might provide family medical history. For example, an individual requesting FMLA leave to care for a seriously ill relative may disclose family medical history when completing the certification required by section 103 of the FMLA. A covered entity that receives family medical history under these circumstances would not violate GINA. Because this information is still subject to GINA's confidentiality requirements, however, the information must be placed in a separate medical file and must be

treated as a confidential medical record, as more fully described below.

Commercially and Publicly Available Information: Fourth, GINA provides an exception for the purchase of commercially and publicly available materials that may include family medical history. As with the exception applicable to the inadvertent acquisition of family medical history, the Commission reads this exception as applying to all genetic information, not just to family medical history. For example, an employer would not violate GINA if it learned that an employee had the breast cancer gene by reading a newspaper article profiling several women living with the knowledge that they have the gene.

The statute identifies newspapers, magazines, periodicals, and books as potential sources of genetic information. The proposed regulation adds to that list information obtained through electronic media, such as the Internet, television, and movies. The exception does not include family medical history contained in medical databases or court records. Research databases available to scientists on a restricted basis, such as databases that NIH maintains for the scientific community, would not be considered ''commercially and publicly available.'' The Commission invites public comment on whether there are sources similar in kind to those identified in the statute that may contain family medical history and should be included either in the group of excepted sources or the group of prohibited sources, such as personal Web sites, or social networking sites. Further, we would appreciate comment regarding whether the additional sources that are noted in the proposed regulation should be deemed similar in nature to those contained in the statute so as to remain a part of the regulation.

Genetic Monitoring: Fifth, the statute permits a covered entity to engage in the genetic monitoring of the biological effects of toxic substances in the workplace. The statute and proposed regulation note that monitoring must meet certain requirements. First, a covered entity must provide written notice of the monitoring and, where the monitoring is not specifically required by federal or state law, must obtain an individual's prior knowing, written, and voluntary authorization. Second, the proposed regulation describes the type of authorization the employer must provide in order to ensure that it is knowing and voluntary. The authorization must be written in a way that is reasonably likely to be understood by the person from whom the information is being sought, must describe the type of genetic information that will be obtained and the general purposes for which it will be used, and must describe the limitations on disclosure of the genetic information. Third, all monitoring must comply with all applicable provisions of the law and implementing regulations, including regulations promulgated pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*) , and the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*).

Whether or not the monitoring is undertaken pursuant to federal or state law, GINA requires that the individual receive results of the monitoring and that the covered entity receive information only in aggregate terms that do not disclose the identity of specific individuals. As noted above in the paragraph addressing genetic services, covered entities that engage in genetic monitoring, particularly when done on a voluntary basis, are cautioned where the monitoring encompasses only a few individuals: Information obtained in the aggregate may make a particular individual's genetic information identifiable.

DNA Testing for Law Enforcement or Human Remains Identification Purposes: Finally, sections 202(b), covering employers, and 205(b), covering apprenticeship or other training programs, include a sixth exception for employers that engage in DNA testing for law enforcement purposes as a forensic lab or for purposes of human remains identification. GINA provides that these entities may request or require ''genetic information of such employer's employees, apprentices, or trainees, but only to the extent that such genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination and maintained in a manner consistent with such use.'' This is a very limited exception and, if properly conducted, an employer or training program would not obtain health-related genetic information. The EEOC invites comments on the impact of this exception on law enforcement.

Section 1635.9 Confidentiality

GINA section 206 addresses confidentiality of genetic information generally, establishes permitted disclosures, and describes the relationship between GINA and HIPAA. Each of these items is discussed below.

Section 1635.9(a) Treatment of Genetic Information

Under GINA, covered entities are required to treat genetic information the same way they treat medical information generally. That is, covered entities in possession of genetic information must keep the information confidential and, if the information is in writing, must keep it apart from other personnel information in separate medical files.[6] Congress made express the requirement that covered entities keep genetic information confidential by using the confidentiality regime required by the ADA generally for medical records. H.R. Rep. 110–28, part I, at 39. GINA does not require that covered entities maintain a separate medical file for genetic information. Genetic information may be kept in the same file as medical information subject to the ADA.

As noted above, a covered entity does not violate GINA when it acquires genetic information available through publicly available sources. For example, an employer that purchased a newspaper with an obituary about a family member of an employee indicating that the employee's relative died of a disease or disorder that has a genetic component would not violate GINA. Similarly, a labor organization may lawfully acquire a magazine or periodical with an article about a member that includes family medical history information about the member's parent, sibling, or child. In neither instance, nor in any similar instance where a covered entity acquires family medical history through publicly available sources, must the covered entity place the information into a confidential medical file. Moreover, inasmuch as one of GINA's purposes is the protection from disclosure of otherwise private genetic information, disclosure of publicly available information does not violate the Act. However, a covered entity may not use family medical history to make employment decisions, even if the information was acquired through commercially and publicly available sources.

Section 1635.9(b) Limitations on disclosure

GINA permits disclosure of genetic information in limited circumstances. First, a covered entity may disclose genetic information to the individual to whom it relates, if the individual

[6] Genetic information that a covered entity receives verbally and does not reduce to writing must still be kept confidential, except to the extent that GINA permits disclosure.

requests disclosure in writing. Second, the section states that genetic information may be provided to an occupational health researcher ''if the research is being conducted in compliance with the regulations under'' 45 CFR part 46.

The third exception permits disclosure in compliance with a court order. It provides that the disclosure of genetic information must be carefully tailored to the terms of the order and the covered entity must inform the individual about the order and what information it disclosed. This exception does not allow disclosures in other circumstances during litigation, such as in response to discovery requests that are not governed by an order specifying the genetic information that must be disclosed.

The fourth exception permits disclosure of relevant genetic information to government officials investigating compliance with the statute. The fifth exception permits disclosure consistent with the requirements of the FMLA or similar state or local leave law. For example, an employee's supervisor who receives a request for FMLA leave from an employee who wants to care for a child with a serious health condition may forward this request to persons with a need to know the information because of responsibilities relating to the handling of FMLA requests. Finally, the sixth exception permits disclosure of family medical history to federal, state, or local public health officials in connection with a contagious disease that presents an imminent hazard of death or life-threatening illness. The statute requires the covered entity to notify the employee of any release of a family member's medical history information when undertaken for this purpose.

Section 1635.9(c) Relationship to HIPAA Privacy Regulations

GINA section 206(c) provides that the provisions of Title II of GINA are not intended to apply to uses and disclosures of health information governed by the HIPAA Privacy Rule. Accordingly, and consistent with the general rule of construction implementing this statutory provision at 1635.11(d), this proposed rule provides at 1635.9(c) that nothing in 1635.9 should be construed as applying to the use or disclosure of genetic information that is protected health information subject to the HIPAA Privacy Rule. See discussion of Section 1635.11(d), infra, for an example of the interaction under GINA between the HIPAA Privacy Rule and this proposed regulation.

Section 1635.10 Enforcement and Remedies

In crafting GINA's enforcement and remedies section, Congress recognized the advisability of using the existing mechanisms in place for redress of other forms of employment discrimination. In particular, the Senate noted that this section intends to take ''advantage of the expertise and process of the EEOC.'' S. Rep. No. 110–48, at 31 & n.17. In this regard, GINA and the proposed regulation provide the following:

- The enforcement mechanism applicable and remedies available to employees and others covered by Title VII apply to GINA as well. The statute references sections 705–707, 709–711, and 717 of Title VII, 42 U.S.C. 2000e–4, *et seq.* The Commission notes that its implementing regulations found at 29 CFR parts 1601 (procedural regulations), 1602 (recordkeeping and reporting requirements under Title VII and the ADA), and 1614 (federal sector employees) apply here as well.
- The procedures applicable and remedies available to employees covered by sections 302 and 304 of the Government Employee Rights Act of 1991, 42 U.S.C. 2000e–16(b) & (c) (GERA) apply under GINA. EEOC regulations applicable to GERA are found at 29 CFR part 1603.
- The procedures applicable and remedies available to employees covered by 3 U.S.C. 401 *et seq.* are set forth in 3 U.S.C. 451–454. These sections provide for counseling and mediation of employment discrimination allegations and the formal process of complaints before the Commission using the same administrative process generally applicable to employees in the Executive Branch of the Federal government; that is, the process set forth in 29 CFR part 1614.

Employees covered through the Congressional Accountability Act of 1995 must use the procedures set forth in that statute. The Commission has no authority with respect to the enforcement of GINA as to employees covered through this provision.

The proposed regulation includes a separate reference to the remedies provisions applicable to GINA. Similar to other federal anti-discrimination laws, GINA provides for recovery of pecuniary and non-pecuniary damages, including compensatory and punitive damages. The statute's incorporation by reference of section 1977A of the Revised Statutes of the United States (42 U.S.C. 1981a) also imports the limitations on the recovery of compensatory damages for future pecuniary losses, emotional pain, suffering, etc., and punitive damages applicable generally in employment discrimination cases, depending on the size of the employer. Punitive damages are not available in actions against the federal government, or against state or local government employers.

Finally, the proposed regulation notes that covered entities are required to post notices in conspicuous places describing GINA's applicable provisions. The Commission, prior to GINA's effective date, will publish in the **Federal Register** appropriate language for use in such notices.

Section 1635.11 Construction

GINA section 209 and this section of the proposed regulation set forth rules of construction applicable to GINA's coverage and prohibitions. They address principally GINA's relationship to other federal laws covering discrimination, health insurance, and other areas of potential conflict.

Section 1635.11(a) Relationship to Other Laws Generally

The subsection first addresses the relationship of Title II of GINA to other federal, state, local, and tribal laws governing genetic discrimination, the privacy of genetic information, and discrimination based on disability. Over 40 states have laws addressing genetic discrimination in employment. Some may be more stringent than GINA; others less so. GINA makes clear that it does not preempt any other state or local law that provides equal or greater protections than GINA from discrimination on the basis of genetic information or improper access or disclosure of genetic information. Additionally, Title II of GINA does not limit the rights or protections under federal, state, local or Tribal laws that provide greater privacy protection to genetic information.

Similarly, GINA does not affect an individual's rights under the ADA, the Rehabilitation Act, or state or local laws that prohibit discrimination against individuals based on disability. So, for example, an individual could challenge the disclosure of genetic information under the ADA where the information is also considered medical information subject to that law. Additionally, even though information that an employee currently has a disease, such as cancer, is not subject to GINA's confidentiality provisions, such information would be protected under the ADA, and an employer would be liable under that law for disclosing the information, unless a specific ADA exception applied.

GINA does limit, however, an employer's ability to obtain genetic information as a part of a disability-related inquiry or medical examination. For example, upon the effective date of GINA, an employer will no longer be able to obtain family medical history or conduct genetic tests of post-offer job applicants, as it currently may do under the ADA.

Other provisions in this section clarify that GINA does not (1) Limit or expand rights or obligations under workers' compensation laws; (2) limit or expand the rights of federal agencies to conduct or support occupational or other health research conducted in accordance with the rules found in 45 CFR part 46; or (3) limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration or other workplace health and safety laws and regulations. Another provision addresses the exemption from GINA of the Armed Forces Repository of Specimen Samples for the Identification of Remains.

The final provision in this subsection makes clear that GINA does not require that a covered entity provide individuals with any specific benefits or specialized health coverage. A covered entity does not have to offer health benefits that relate to any specific genetic disease or disorder. GINA merely requires that the covered entity not discriminate against those covered by the Act on the basis of genetic information.

Section 1635.11(b) Relationship to Other Federal Laws Governing Health Coverage

GINA section 209(a)(2)(B) includes four subsections that address the relationship between Title II and requirements or prohibitions that are subject to enforcement under other federal statutes addressing health coverage. Section 209(a)(2)(B)(i) states that nothing in Title II provides for enforcement of or penalties for violations of requirements or prohibitions subject to enforcement for a violation of GINA Title I. The three following subsections, sections 209(a)(2)(B)(ii)–(iv), state that nothing in Title II provides for enforcement of or penalties for any requirement or prohibition subject to enforcement for a violation or violations of various sections of ERISA, the Public Health Service Act, and the Internal Revenue Code, which generally prohibit a group health plan or health insurance issuer in the group market from:

- Imposing a preexisting condition exclusion based solely on genetic information, in the absence of a diagnosis of a condition;
- Discriminating against individuals in eligibility and continued eligibility for benefits based on genetic information; and
- Discriminating against individuals in premium or contribution rates under the plan or coverage based on genetic information, although such a plan or issuer may adjust premium rates for an employer based on the manifestation of a disease or disorder of an individual enrolled in the plan.

The intent of this section is to create a clear ''firewall'' between GINA Titles I and II. Section 209(a)(1)(B) eliminates ''double liability'' by preventing Title II causes of action from being asserted regarding matters subject to enforcement under Title I or the other genetics provisions for group coverage in ERISA, the Public Health Service Act, and the Internal Revenue Code. The firewall seeks to ensure that health plan or issuer requirements or prohibitions are addressed and remedied through ERISA, the Public Health Service Act, or the Internal Revenue Code and not through Title II and other employment discrimination procedures. The proposed regulation reiterates the language of the section, noting the specific sections from ERISA, the Public Health Service Act, and the Internal Revenue Code that the section covers.

The Commission notes that the firewall does not immunize covered entities from liability for decisions and actions taken that violate Title II, including employment decisions based on health benefits, because such benefits are within the definition of compensation, terms, conditions, or privileges of employment. For example, an employer that fires an employee because of anticipated high health claims based on genetic information remains subject to liability under Title II. On the other hand, acts or omissions relating to health plan eligibility, benefits, or premiums, or a health plan's request for or collection of genetic information remain subject to enforcement under Title I exclusively.

Section 1635.11(c) Relationship to Authorities Under GINA Title I

The final subsection in GINA section 209 provides that nothing in GINA Title II prohibits a group health plan or group health insurance issuer from engaging in any activity that is authorized under GINA Title I or the provisions identified in GINA section 209(a)(2)(B)(i)–(iv), including any implementing regulations thereunder. The section and the proposed implementing regulation reiterate the limitations imposed on Title II in the area of group health coverage.

Section 1635.11(d) Relationship to HIPAA Privacy Regulations

Proposed section 1635.11(d) implements section 206(c) of GINA Title II by providing, as a general rule of construction, that this proposed regulation does not apply to health information subject to the HIPAA Privacy Rule. Thus, entities subject to the HIPAA Privacy Rule must continue to apply the requirements of the HIPAA Privacy Rule, and not the requirements of GINA Title II and these implementing regulations, to genetic information that is protected health information. For example, if a hospital subject to the HIPAA Privacy Rule treats a patient who is also an employee of the hospital, any genetic information that is obtained or created by the hospital in its role as a health care provider is protected health information and is subject to the requirements of the HIPAA Privacy Rule and not those of GINA. In contrast, however, any genetic information obtained by the hospital in its role as employer, for example, as part of a request for leave by the employee, would be subject to GINA Title II and this rule.

Section 1635.12 Medical Information That Is Not Genetic Information

The proposed regulation states that a covered entity does not violate GINA by acquiring, using, or disclosing medical information about a manifested disease or disorder that is not genetic information, even if the disease or disorder may have a genetic basis or component. It further notes, however, that the Americans with Disabilities Act, and the applicable regulations issued in support of the Act, would limit the disclosure of genetic information that also is medical information and covered by the ADA.

Regulatory Procedures

Executive Order 12866

Pursuant to Executive Order 12866, EEOC has coordinated this proposed rule with the Office of Management and Budget. Under section 3(f)(1) of Executive Order 12866, EEOC has determined that the proposed regulation 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. Therefore, a detailed cost-

benefit assessment of the proposed regulation is not required.

Paperwork Reduction Act

This proposal contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

Regulatory Flexibility Act

Title II of GINA applies to all employers with fifteen or more employees, approximately 822,000 of which are small firms (entities with 15–500 employees) according to data provided by the Small Business Administration Office of Advocacy. *See Firm Size Data* at *http://sba.gov/advo/research/data.html#us.*

The Commission certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities because it imposes no reporting burdens and only minimal costs on such firms. GINA is intended to prevent discrimination based on concerns that genetic information about an individual suggests an increased risk of, or predisposition to, acquiring a condition in the future. Because individuals protected under GINA do not have currently manifested conditions that would result in any workplace barriers, the law imposes no costs related to making workplace modifications. To the extent GINA requires businesses that obtain genetic information about applicants or employees to maintain it in confidential files, GINA permits them to do so using the same confidential files they are already required to maintain under Title I of the Americans with Disabilities Act.

The Act may require some modification to the post offer/pre-employment medical examination process of some employers, to remove from the process questions pertaining to family medical history. We do not have data on the number and size of businesses that obtain family medical history as part of a post-offer medical examination. However, our experience with enforcing the ADA, which required all employers with fifteen or more employees to remove medical inquiries from their application forms, suggests that the cost of revising post-offer medical questionnaires to eliminate questions about family medical history would not impose significant costs.

GINA will require that covered entities obtain and post revised notices informing covered individuals of their rights under the law. Employers will not incur any costs related to obtaining or posting these notices, because the Commission provides employers, at no cost, a poster explaining the EEO laws that will be updated to include information about GINA.

To the extent that employers will need to expend resources to train human resources staff and others on the requirements of GINA, we note that the EEOC conducts extensive outreach and technical assistance programs, many of them at no cost to employers, to assist in the training of relevant personnel on EEO-related issues. In FY 2008, for example, EEOC's outreach efforts included 5,360 education, training, and outreach events reaching over 270,000 people. EEOC conducted over 700 outreach events directed specifically toward small businesses, reaching 35,515 small business representatives. In FY 2009, we expect to include information about GINA in our outreach programs in general and to offer numerous GINA-specific outreach programs, once the regulations implementing Title II of GINA become final. We will also post technical assistance documents on our Web site explaining the basics of the new regulation, as we do with all of our new regulations and policy documents. We estimate that the typical human resources professional will need to dedicate, at most, three hours to gain a satisfactory understanding of the new requirements, either by attending an EEOC-sponsored event or reviewing the relevant materials on their own. We further estimate that the median hourly pay rate of an HR professional is approximately $45.00. *See* Bureau of Labor Statistics, Occupational Employment and Wages, May 2007 at *http://www.bls.gov/oes/current/oes113049.htm#5#5.* Assuming that small entities have between one and five HR professionals/managers, we estimate that the cost per entity of providing appropriate training will be between approximately $135.00 and $675.00, at the high end. EEOC does not believe that this cost will be significant for the impacted small entities.

We urge small entities to submit comments concerning EEOC's estimates of the number of small entities impacted, as well as the cost to those entities.

Unfunded Mandates Reform Act of 1995

This proposed rule will not result in the expenditure by state, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Dated: February 23, 2009.

For the Commission.

Stuart J. Ishimaru,

Acting Chairman.

List of Subjects in 29 CFR Part 1635

Administrative practice and procedure, Equal employment opportunity.

For the reasons set forth in the preamble, the EEOC proposes to amend 29 CFR chapter XIV by adding part 1635 to read as follows:

PART 1635—GENETIC INFORMATION NONDISCRIMINATION ACT OF 2008

Sec.
1635.1 Purpose.
1635.2 Definitions—general.
1635.3 Definitions specific to GINA.
1635.4 Prohibited Practices—in general.
1635.5 Limiting, segregating, and classifying.
1635.6 Causing an employer to discriminate.
1635.7 Retaliation.
1635.8 Acquisition of genetic information.
1635.9 Confidentiality.
1635.10 Enforcement and remedies.
1635.11 Construction.
1635.12 Medical information that is not genetic information.

Authority: 110 Stat. 233; 42 U.S.C. 2000ff.

§ 1635.1 Purpose.

The purpose of this part is to implement Title II of the Genetic Information Non-Discrimination Act of 2008, 42 U.S.C. 2000ff, *et seq.* Title II of GINA prohibits use of genetic information in employment decision-making, restricts deliberate acquisition of genetic information, requires that genetic information be maintained as a confidential medical record, and places strict limits on disclosure of genetic information. The law provides remedies for individuals whose genetic information is acquired, used, or disclosed in violation of its protections.

§ 1635.2 Definitions—general.

(a) *Commission* means the Equal Employment Opportunity Commission, as established by section 705 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–4.

(b) *Covered Entity* means an employer, employing office, employment agency, labor organization, or joint labor-management committee.

(c) *Employee* means an individual employed by a covered entity, as well as an applicant for employment and a former employee. An employee, including an applicant for employment and a former employee, is

(1) As defined by section 701 of the Civil Rights Act of 1964, 42 U.S.C. 2000e, an individual employed by a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year and any agent of such a person;

(2) As defined by section 304(a) of the Government Employee Rights Act, 42 U.S.C. 2000e-16c(a), a person chosen or appointed by an individual elected to public office by a State or political subdivision of a State to serve as part of the personal staff of the elected official, to serve the elected official on a policy-making level, or to serve the elected official as the immediate advisor on the exercise of the elected official's constitutional or legal powers.

(3) As defined by section 101 of the Congressional Accountability Act, 2 U.S.C. 1301, any employee of the House of Representatives, the Senate, the Capitol Guide Service, the Capitol Police, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, or the Office of Technology Assessment;

(4) As defined by, and subject to the limitations in, section 2(a) of the Presidential and Executive Office Accountability Act, 3 U.S.C. 411(c), any employee of the executive branch not otherwise covered by section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–16, section 15 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. 633a, or section 501 of the Rehabilitation Act of 1973, 29 U.S.C. 791, whether appointed by the President or any other appointing authority in the executive branch, including an employee of the Executive Office of the President;

(5) As defined by, and subject to the limitations in, section 717 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–16, and regulations of the Equal Employment Opportunity Commission at 29 CFR 1614.103, an employee of a federal executive agency, the United States Postal Service and the Postal Rate Commission, the Tennessee Valley Authority, the National Oceanic and Atmospheric Administration Commissioned Corps, the Government Printing Office, and the Smithsonian Institution; an employee of the federal judicial branch having a position in the competitive service; and an employee of the Library of Congress.

(d) *Employer* means any person that employs an employee defined in § 1635.2(c) of this part, and any agent of such person, except that, as limited by section 701(b)(1) and (2) of the Civil Rights Act of 1964, 42 U.S.C. 2000e(b)(1) and (2), an employer does not include an Indian tribe or a bona fide private club (other than a labor organization) that is exempt from taxation under section 501(c) of the Internal Revenue Code of 1986.

(e) *Employing office* is defined in the Congressional Accountability Act, 2 U.S.C. 1301(9), to mean the personal office of a Member of the House of Representatives or of a Senator; a committee of the House of Representatives or the Senate or a joint committee; any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or the Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(f) *Employment agency* is defined in 42 U.S.C. 2000e(c) to mean any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(g) *Joint labor-management committee* is defined as an entity that controls apprenticeship or other training or retraining programs, including on-the-job training programs.

(h) *Labor organization* is defined at 42 U.S.C. 2000e(d) to mean an organization with fifteen or more members engaged in an industry affecting commerce, and any agent of such an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(i) *Member* includes, with respect to a labor organization, an applicant for membership.

(j) *Person* is defined at 42 U.S.C. 2000e(a) to mean one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

(k) *State* is defined at 42 U.S.C. 2000e(i) and includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 *et seq.*).

§ 1635.3 Definitions specific to GINA.

(a) *Family member* means with respect to any individual

(1) A person who is a dependent of that individual as the result of marriage, birth, adoption, or placement for adoption; or

(2) A first-degree, second-degree, third-degree, or fourth-degree relative of the individual, or of a dependent of the individual as defined in § 1635.3(a)(1).

(i) First-degree relatives include an individual's parents, siblings, children, and half-siblings.

(ii) Second-degree relatives include an individual's grandparents, grandchildren, uncles, aunts, nephews, and nieces.

(iii) Third-degree relatives include an individual's great-grandparents, great grandchildren, great uncles/aunts, and first cousins.

(iv) Fourth-degree relatives include an individual's great-great grandparents, great-great grandchildren, and first cousins once-removed (i.e., the children of the individual's first cousins).

(b) *Family medical history.* Family medical history means information about the manifestation of disease or disorder in family members of the individual.

(c) *Genetic information.* (1) Genetic information means information about:

(i) An individual's genetic tests;

(ii) The genetic tests of that individual's family members;

(iii) The manifestation of disease or disorder in family members of the individual (family medical history);

(iv) An individual's request for, or receipt of, genetic services, or the participation in clinical research that includes genetic services by the individual or a family member of the individual; or

(v) The genetic information of a fetus carried by an individual or by a pregnant woman who is a family member of the individual and the genetic information of any embryo legally held by the individual or family member using an assisted reproductive technology.

(2) Genetic information does not include information about the sex or age of the individual or the sex or age of family members.

(d) *Genetic monitoring* means the periodic examination of employees to evaluate acquired modifications to their genetic material, such as chromosomal damage or evidence of increased occurrence of mutations, caused by the toxic substances they use or are exposed

to in performing their jobs, in order to identify, evaluate, and respond to the effects of or control adverse environmental exposures in the workplace.

(e) *Genetic services* means a genetic test; genetic counseling (including obtaining, interpreting, or assessing genetic information); or genetic education.

(f) *Genetic test*—(1) *In general.* ''Genetic test'' means an analysis of human DNA, RNA, chromosomes, proteins, or metabolites that detects genotypes, mutations, or chromosomal changes.

(i) An analysis of proteins or metabolites that does not detect genotypes, mutations, or chromosomal changes is not a genetic test.

(ii) A medical examination that tests for the presence of a virus that is not composed of *human* DNA, RNA, chromosomes, proteins, or metabolites is not a genetic test.

(2) *Alcohol and drug testing.* (i) A test for the presence of alcohol or drugs is not a genetic test.

(ii) A test to determine whether an individual has a genetic predisposition for alcoholism or drug use is a genetic test.

(g) *Manifestation* or *manifested* means, with respect to a disease, disorder, or pathological condition, that an individual has been or could reasonably be diagnosed with the disease, disorder, or pathological condition by a health care professional with appropriate training and expertise in the field of medicine involved. For purposes of this part, a disease, disorder, or pathological condition is not manifested if the diagnosis is based principally on genetic information or on the results of one or more genetic tests.

§ 1635.4 Prohibited practices—in general.

(a) It is unlawful for an employer to discriminate against an individual on the basis of the genetic information of the individual in regard to hiring, discharge, compensation, terms, conditions, or privileges of employment.

(b) It is unlawful for an employment agency to fail or refuse to refer any individual for employment or otherwise discriminate against any individual because of genetic information of the individual.

(c) It is unlawful for a labor organization to exclude or to expel from the membership of the organization, or otherwise to discriminate against, any member because of genetic information with respect to the member.

(d) It is an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining programs, including on-the-job training programs to discriminate against any individual because of the individual's genetic information in admission to, or employment in, any program established to provide apprenticeship or other training or retraining.

§ 1635.5 Limiting, segregating, and classifying.

(a) A covered entity may not limit, segregate, or classify an individual, or fail or refuse to refer for employment any individual, in any way that would deprive or tend to deprive the individual of employment opportunities or otherwise affect the status of the individual as an employee, because of genetic information with respect to the individual.

(b) Notwithstanding any language in this part, a cause of action for disparate impact within the meaning of section 703(k) of the Civil Rights Act of 1964, 42 U.S.C. 2000e–2(k), is not available under this part.

§ 1635.6 Causing an employer to discriminate.

An employment agency, labor organization, or joint labor-management training or apprenticeship program may not cause or attempt to cause an employer, or its agent, to discriminate against an individual in violation of this part, including with respect to the individual's participation in an apprenticeship or other training or retraining program, or with respect to a member's participation in a labor organization.

§ 1635.7 Retaliation.

A covered entity may not discriminate against any individual because such individual has opposed any act or practice made unlawful by this title or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this title.

§ 1635.8 Acquisition of genetic information.

(a) *General prohibition.* A covered entity may not request, require, or purchase genetic information of an individual, except as specifically provided in paragraph (b) of this section.

(b) *Exceptions.* The general prohibition against requesting, requiring, or purchasing genetic information does not apply:

(1) Where a covered entity inadvertently requests or requires genetic information of the individual or family member of the individual. This exception to the acquisition of genetic information applies in, but is not necessarily limited to, situations where—

(i) A manager, supervisor, union representative, or employment agency personnel learns genetic information about an individual by overhearing a conversation between the individual and others;

(ii) A manager, supervisor, union representative, or employment agency personnel learns genetic information about an individual by receiving it from the individual or third-parties without having solicited or sought the information;

(iii) An individual provides genetic information as part of documentation to support a request for reasonable accommodation under Federal, State, or local law, as long as the covered entity's request for such documentation is lawful;

(iv) An employer requests medical information (other than genetic information) as permitted by Federal, State, or local law from an individual, who responds by providing, among other information, genetic information;

(v) An individual provides genetic information to support a request for leave that is not governed by Federal, State, or local laws requiring leave, as long as the documentation required to support the request otherwise complies with the requirements of the Americans with Disabilities Act and other laws limiting a covered entity's access to medical information; or

(vi) A covered entity learns genetic information about an individual in response to an inquiry about the individual's general health, an inquiry about whether the individual has any current disease, disorder, or pathological condition, or an inquiry about the general health of an individual's family member;

(2) Where a covered entity offers health or genetic services, including such services offered as part of a voluntary wellness program. This exception applies only where—

(i) The individual provides prior knowing, voluntary, and written authorization that

(A) Is written so that the individual from whom the genetic information is being obtained is reasonably likely to understand the form;

(B) Describes the type of genetic information that will be obtained and the general purposes for which it will be used; and

(C) Describes the restrictions on disclosure of genetic information.

(ii) Individually identifiable genetic information is provided only to the

individual (or family member if the family member is receiving genetic services) and the licensed health care professional or board certified genetic counselor involved in providing such services; and

(iii) Any individually identifiable genetic information provided under paragraph (b)(2) of this section is only available for purposes of such services and is not disclosed to the covered entity except in aggregate terms that do not disclose the identity of specific individuals.

(3) Where the employer requests family medical history to comply with the certification provisions of the Family and Medical Leave Act of 1993 (29 U.S.C. 2601 *et seq.*) or State or local family and medical leave laws.

(4) Where the covered entity acquires genetic information from documents that are commercially and publicly available for review or purchase, including newspapers, magazines, periodicals, or books, or through electronic media, such as information communicated through television, movies, or the Internet, except that a covered entity may not research medical databases or court records, even where such databases may be publicly and commercially available, for the purpose of obtaining genetic information about an individual.

(5) Where the covered entity acquires genetic information for use in the genetic monitoring of the biological effects of toxic substances in the workplace. In order for this exception to apply, the covered entity must provide written notice of the monitoring to the individual. This exception further provides that such monitoring:

(i) Either is required by federal or state law, or conducted only where an individual gives prior knowing, voluntary and written authorization to the monitoring that—

(A) Is written so that the individual from whom the genetic information is being obtained is reasonably likely to understand the form.;

(B) Describes the genetic information that will be obtained;

(C) Describes the restrictions on disclosure of genetic information;

(ii) Ensures that the individual is informed of individual monitoring results;

(iii) Is conducted in compliance with any Federal genetic monitoring regulations, including any regulations that may be promulgated by the Secretary of Labor pursuant to the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*), the Federal Mine Safety and Health Act of 1977 (30 U.S.C. 801 *et seq.*), or the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*); or State genetic monitoring regulations, in the case of a State that is implementing genetic monitoring regulations under the authority of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*); and

(iv) Provides for reporting of the results of the monitoring to the covered entity, excluding any licensed health care professional or board certified genetic counselor involved in the genetic monitoring program, only in aggregate terms that do not disclose the identity of specific individuals.

(6) Where an employer that conducts DNA analysis for law enforcement purposes as a forensic laboratory or for purposes of human remains identification requests or requires genetic information of its employees, apprentices, or trainees, but only to the extent that the genetic information is used for analysis of DNA identification markers for quality control to detect sample contamination and maintained in a manner consistent with such use.

(c) A covered entity may not use genetic information obtained pursuant to the exceptions in § 1635.8(b) of this part to discriminate, as defined by §§ 1635.4, 1635.5, or 1635.6, and must keep such information confidential as required by § 1635.9.

§ 1635.9 Confidentiality.

(a) *Treatment of genetic information.* (1) A covered entity that possesses genetic information in writing about an employee or member must maintain such information on forms and in medical files (including where the information exists in electronic forms and files) that are separate from personnel files and treat such information as a confidential medical record.

(2) A covered entity may maintain genetic information about an employee or member in the same file in which it maintains confidential medical information subject to section 102(d)(3)(B) of the Americans with Disabilities Act, 42 U.S.C. 12112(d)(3)(B).

(3) Genetic information that a covered entity receives orally need not be reduced to writing, but may not be disclosed, except as permitted by this part.

(4) Genetic information that a covered entity acquires through publicly available sources, as provided by § 1635.8(b)(4) of this part, is not considered confidential genetic information, but may not be used to discriminate against an individual as described in §§ 1635.4, 1635.5, or 1635.6 of this part.

(b) *Limitations on disclosure.* A covered entity that possesses any genetic information, regardless of how the entity obtained the information (except for genetic information acquired through publicly available sources), may not disclose it except:

(1) To the employee or member (or family member if the family member is receiving the genetic services) about whom the information pertains upon receipt of the employee's or member's written request;

(2) To an occupational or other health researcher if the research is conducted in compliance with the regulations and protections provided for under 45 CFR part 46;

(3) In response to an order of a court, except that the covered entity may disclose only the genetic information expressly authorized by such order; and if the court order was secured without the knowledge of the individual to whom the information refers, the covered entity shall inform the individual of the court order and any genetic information that was disclosed pursuant to such order;

(4) To government officials investigating compliance with this title if the information is relevant to the investigation;

(5) To the extent that such disclosure is made in support of an employee's compliance with the certification provisions of section 103 of the Family and Medical Leave Act of 1993 (29 U.S.C. 2613) or such requirements under State family and medical leave laws; or

(6) To a Federal, State, or local public health agency only with regard to information about the manifestation of a disease or disorder that concerns a contagious disease that presents an imminent hazard of death or life-threatening illness, provided that the individual whose family member is the subject of the disclosure is notified of such disclosure.

(c) *Relationship to HIPAA Privacy Regulations.* Pursuant to § 1635.11(d) of this part, nothing in this section shall be construed as applying to the use or disclosure of genetic information that is protected health information subject to the regulations issued pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

§ 1635.10 Enforcement and Remedies.

(a) *Powers and procedures:* The following powers and procedures shall apply to allegations that Title II of GINA has been violated:

(1) The powers and procedures provided to the Commission, the

Attorney General, or any person by sections 705 through 707 and 709 through 711 of the Civil Rights Act of 1964, 42 U.S.C. 2000e–4 through 2000e–6 and 2000e–8 through 2000e–10, where the alleged discrimination is against an employee defined in 1635.2(c)(1) of this part or against a member of a labor organization;

(2) The powers and procedures provided to the Commission and any person by sections 302 and 304 of the Government Employees Rights Act, 42 U.S.C. 2000e–16b and 2000e–16c, and in regulations at 29 CFR part 1603, where the alleged discrimination is against an employee as defined in § 1635.2(c)(2) of this part;

(3) The powers and procedures provided to the Board of Directors of the Office of Compliance and to any person under the Congressional Accountability Act, 2 U.S.C. 1301 *et seq.* (including the provisions of Title 3 of that act, 2 U.S.C. 1381 *et seq.*), where the alleged discrimination is against an employee defined in § 1635.2(c)(3) of this part;

(4) The powers and procedures provided in 3 U.S.C. 451 *et seq.*, to the President, the Commission, or any person in connection with an alleged violation of section 3 U.S.C. 411(a)(1), where the alleged discrimination is against an employee defined in § 1635.2(c)(4) of this part;

(5) The powers and procedures provided to the Commission, the Librarian of Congress, and any person by section 717 of the Civil Rights Act, 42 U.S.C. 2000e–16, where the alleged discrimination is against an employee defined in § 1635.2(c)(5) of this part.

(b) *Remedies.* The following remedies are available for violations of GINA sections 202, 203, 204, 205, 206, and 207(f):

(1) Compensatory and punitive damages as provided for, and limited by, 42 U.S.C. 1981a(a)(1) and (b);

(2) Reasonable attorney's fees, including expert fees, as provided for, and limited by, 42 U.S.C. 1988(b) and (c); and

(3) Injunctive relief, including reinstatement and hiring, back pay, and other equitable remedies as provided for, and limited by, 42 U.S.C. 2000e–5(g).

§ 1635.11 Construction.

(a) *Relationship to other laws, generally.* This part does not—

(1) Limit the rights or protections of an individual under any other Federal, State, or local law that provides equal or greater protection to an individual than the rights or protections provided for under this part, including the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.*), the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*), and State and local laws prohibiting genetic discrimination or discrimination on the basis of disability;

(2) Apply to the Armed Forces Repository of Specimen Samples for the Identification of Remains;

(3) Limit or expand the protections, rights, or obligations of employees or employers under applicable workers' compensation laws;

(4) Limit the authority of a Federal department or agency to conduct or sponsor occupational or other health research in compliance with the regulations and protections provided for under 45 CFR part 46;

(5) Limit the statutory or regulatory authority of the Occupational Safety and Health Administration or the Mine Safety and Health Administration to promulgate or enforce workplace safety and health laws and regulations; or

(6) Require any specific benefit for an employee or member or a family member of an employee or member (such as additional coverage for a particular health condition that may have a genetic basis) under any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan.

(b) *Relation to certain Federal laws governing health coverage.* Nothing in GINA Title II provides for enforcement of, or penalties for, violation of any requirement or prohibition of a covered entity subject to enforcement for a violation of:

(1) Amendments made by Title I of GINA.

(2) Section 701(a) of the Employee Retirement Income Security Act (29 U.S.C. 1181) (ERISA), section 2701(a) of the Public Health Service Act (42 U.S.C. 300gg(a)), and section 9801(a) of the Internal Revenue Code (26 U.S.C. 9801(a)), as such sections apply with respect to genetic information pursuant to 29 U.S.C. 1181(b)(1)(B), 42 U.S.C. 300gg(b)(1)(B), and 26 U.S.C. 9801(b)(1)(B), respectively, of such sections, which prohibit a group health plan or a health insurance issuer in the group market from imposing a preexisting condition exclusion based solely on genetic information, in the absence of a diagnosis of a condition;

(3) Section 702(a)(1)(F) of ERISA (29 U.S.C. 1182(a)(1)(F)), section 2702(a)(1)(F) of the Public Health Service Act (42 U.S.C. 300gg–1(a)(1)(F)), and section 9802(a)(1)(F) of the Internal Revenue Code (26 U.S.C. 9802(a)(1)(F)), which prohibit a group health plan or a health insurance issuer in the group market from discriminating against individuals in eligibility and continued eligibility for benefits based on genetic information; or

(4) Section 702(b)(1) of ERISA (29 U.S.C. 1182(b)(1)), section 2702(b)(1) of the Public Health Service Act (42 U.S.C. 300gg–1(b)(1), and section 9802(b)(1) of the Internal Revenue Code (26 U.S.C. 9802(b)(1)), as such sections apply with respect to genetic information as a health status-related factor, which prohibit a group health plan or a health insurance issuer in the group market from discriminating against individuals in premium or contribution rates under the plan or coverage based on genetic information.

(c) *Relationship to authorities under GINA Title I.* GINA Title II does not prohibit any group health plan or health insurance issuer offering group health insurance coverage in connection with a group health plan from engaging in any action that is authorized under any provision of law noted in § 1635.11(b) of this part, including any implementing regulations noted in § 1635.11(b).

(d) *Relationship to HIPAA Privacy Regulations.* This part does not apply to genetic information that is protected health information subject to the regulations issued by the Secretary of Health and Human Services pursuant to section 264(c) of the Health Insurance Portability and Accountability Act of 1996.

§ 1635.12 Medical information that is not genetic information.

(a) *Medical information about a manifested disease, disorder, or pathological condition.* (1) A covered entity shall not be considered to be in violation of this part based on the use, acquisition, or disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition of an employee or member, even if the disease, disorder, or pathological condition has or may have a genetic basis or component.

(2) Notwithstanding paragraph (a)(1) of this section, the acquisition, use, and disclosure of medical information that is not genetic information about a manifested disease, disorder, or pathological condition is subject to applicable limitations under sections 103(d)(1)–(4) of the Americans with Disabilities Act (42 U.S.C. 12112(d)(1)–(4)), and regulations at 29 CFR 1630.13, 1630.14, and 1630.16.

(b) *Genetic information related to a manifested disease, disorder, or pathological condition.* Notwithstanding paragraph (a) of this section, genetic information about a manifested disease, disorder, or

pathological condition is subject to the requirements and prohibitions in sections 202 through 206 of GINA and §§ 1635.4 through 1635.7 and 1635.9 of this part.

[FR Doc. E9–4221 Filed 2–27–09; 8:45 am]
BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 160, 161, 164, and 165

[USCG–2005–21869]

RIN 1625–AA99

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System

AGENCY: Coast Guard, DHS.

ACTION: Notice of second public meeting; request for comments.

SUMMARY: In response to requests received, the Coast Guard announces a second public meeting, to be held March 25, 2009, in Seattle, WA, to receive comments on a notice of proposed rulemaking to amend Coast Guard regulations governing Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements. This is an additional meeting to the one previously announced for March 5, 2009, in Washington, DC.

DATES: A public meeting will be held in Seattle, WA, on March 25, 2009, from 1 p.m. to 3:30 p.m. The comment period for the proposed rule closes April 15, 2009. All written comments and related material must be received by the Coast Guard on or before April 15, 2009.

ADDRESSES: The March 25, 2009, public meeting will be held at the following location:

- Seattle, WA—Henry M. Jackson Federal Building, 915 Second Ave., Fourth Floor North Auditorium, Seattle, WA 98174–1067.

A government-issued photo identification will be required for entrance to the building.

Written comments and related material may also be submitted to Coast Guard personnel specified at that meeting. All comments and related material submitted after the meeting must be submitted using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov* under docket number USCG–2005–21869.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning the NOAD portion of this proposed rulemaking or concerning the public meeting, please contact Lieutenant Sharmine Jones, Office of Vessel Activities (CG–543), Coast Guard, *Sharmine.N.Jones@uscg.mil*, telephone 202–372–1234. If you have questions on the AIS portion of this proposed rulemaking, contact Mr. Jorge Arroyo, Office of Navigation Systems (CG–5413), Coast Guard, *Jorge.Arroyo@uscg.mil*, telephone 202–372–1563. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

We published a notice of proposed rulemaking (NPRM) in the **Federal Register** on December 16, 2008 (73 FR 76295), entitled ''Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System.'' In it we stated our intention to hold a public meeting, and to publish a notice to announce the location and date of the public meeting. 73 FR 76296. In this notice, we announce an additional public meeting, to the one previously announced for March 5, 2009, in Washington, DC (74 FR 7534), to receive comments on this proposed rule.

In the NPRM, we proposed to expand the applicability of Notice of Arrival and Departure (NOAD) and Automatic Identification System (AIS) requirements to more commercial vessels, modify NOAD reporting requirements, establish a mandatory method for electronic data submission and establish a separate requirement for certain vessels to submit notices of departure. The proposed rulemaking would also clarify existing AIS requirements and extend the applicability of AIS requirements to additional vessels and beyond Vessel Traffic Service areas to all U.S. navigable waters.

You may view the NPRM in our online docket, in addition to supporting documents prepared by the Coast Guard (Regulatory Analysis & Initial Regulatory Flexibility Analysis, Valuing Mortality Risk Reductions in Homeland Security Regulatory Analyses—Final Report June 2008, and an Environmental Checklist), and comments submitted thus far by going to *http://www.regulations.gov.* Once there, select the Advanced Docket Search option on the right side of the screen, insert USCG–2005–21869 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

We encourage you to participate in this rulemaking by submitting comments either orally at the meeting or in writing. If you bring written comments to the meeting, you may submit them to Coast Guard personnel specified at the meeting to receive written comments. These comments will be submitted to our online public docket. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you have provided.

Anyone can search the electronic form of comments received into any of our dockets 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 a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

Information on Service for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Lieutenant Sharmine Jones at the telephone number indicated under the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Public Meeting

The Coast Guard will hold a public meeting regarding this proposed rulemaking on March 25, 2009, from 1 p.m. to 3:30 p.m., in Seattle, WA, at the Henry M. Jackson Federal Building, 915 Second Ave., Fourth Floor North Auditorium, Seattle, WA 98174–1067.

Should the length of oral comments or the number of commenters warrant doing so, the meeting may be extended to as late as 5 p.m. A government-issued photo identification (for example, a driver's license) will be required for entrance to the building.

We plan to record this meeting using an audio-digital recorder and to make that audio recording available through a link in our online docket. We will also provide a written summary of the meeting and comments and will place that summary in the docket.

Dated: February 25, 2009.

Howard L. Hime,

Acting Director of Commercial Regulations and Standards.

[FR Doc. E9–4356 Filed 2–25–09; 4:15 pm]

BILLING CODE 4910–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 090206144–9186–01]

RIN 0648–AX49

Fisheries of the Northeastern United States; Atlantic Bluefish Fisheries; 2009 Atlantic Bluefish Specifications

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2009 specifications for the Atlantic bluefish fishery, including state-by-state commercial quotas, a recreational harvest limit, and recreational possession limits for Atlantic bluefish off the east coast of the United States. The intent of these specifications is to establish the allowable 2009 harvest levels and possession limits to attain the target fishing mortality rate (F), consistent with the Atlantic Bluefish Fishery Management Plan (FMP).

DATES: Written comments must be received no later than 5 p.m. eastern standard time, on March 17, 2009.

ADDRESSES: You may submit comments, identified by 0648–AX49, by any one of the following methods:

- Electronic Submissions: Submit all electronic public comments via the Federal e-Rulemaking portal: http://www.regulations.gov,
- Fax: (978) 281–9135, Attn: Regional Administrator.
- Mail: Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: ''Comments on 2009 Bluefish Specifications.''

Instructions: All comments received are part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (for example, name, address, etc.) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the specifications document, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the specifications, are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The specifications document is also accessible via the Internet at *http://www.nero.noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

The regulations implementing the FMP are prepared by the Mid-Atlantic Fishery Management Council (Council) and appear at 50 CFR part 648, subparts A and J. Regulations requiring annual specifications are found at § 648.160. The management unit for bluefish (*Pomatomus saltatrix*) is U.S. waters of the western Atlantic Ocean.

The FMP requires that the Council recommend, on an annual basis, total allowable landings (TAL) for the fishery, consisting of a commercial quota and recreational harvest limit (RHL). A research set aside (RSA) quota is deducted from the bluefish TAL (after any applicable transfer) in an amount proportional to the percentage of the overall TAL as allocated to the commercial and recreational sectors. The annual review process for bluefish requires that the Council's Bluefish Monitoring Committee (Monitoring Committee) and Scientific and Statistical Committee (SSC) review and make recommendations based on the best available data, including, but not limited to, commercial and recreational catch/landing statistics, current estimates of fishing mortality, stock abundance, discards for the recreational fishery, and juvenile recruitment. Based on the recommendations of the Monitoring Committee and SSC, the Council makes a recommendation to the Northeast Regional Administrator (RA). This FMP is a joint plan with the Atlantic States Marine Fisheries Commission (Commission); therefore, the Commission meets during the annual specification process to adopt complementary measures.

The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to assure they achieve the FMP objectives, and may modify them if they do not. NMFS then publishes proposed specifications in the **Federal Register**. After considering public comment, NMFS will publish final specifications in the **Federal Register**.

In July 2008, the Monitoring Committee and SSC met to discuss the updated estimates of bluefish stock biomass and project fishery yields for 2009. In August 2008, the Council approved the SSC and Monitoring Committee's recommendations and the Commission's Bluefish Board (Board) adopted complementary management measures.

Proposed Specifications

Updated Model Estimates

According to Amendment 1 to the FMP (Amendment 1), overfishing for bluefish occurs when F exceeds the fishing mortality rate that allows maximum sustainable yield (F_{MSY}), or the maximum F threshold to be achieved. The stock is considered overfished if the biomass (B) falls below the minimum biomass threshold, which is defined as 1/2 B_{MSY}. Amendment 1 also established that the long-term target F is 90 percent of F_{MSY} (F_{MSY} = 0.19, therefore F_{target} = 90 percent of F_{MSY} = 0.17), and the long-term target B is B_{MSY} = 324 million lb (146,964 mt). The rebuilding plan established through Amendment 1 stipulates that the target fishing mortality rate (F_{target}) in 2009 be set at F = 0.31 (based upon earlier estimates ofF_{MSY}, which was updated by the 41st Stock Assessment Review Committee (SARC–41) in 2005), or the status quo fishing mortality rate (F_{2007}), whichever is less.

An age-structured assessment program (ASAP) model for bluefish was approved by SARC–41 in 2005 to

estimate F and annual biomass. The ASAP model was updated for the purpose of estimating the current status of the bluefish stock; i.e., 2007 biomass and F estimates, in order to enable the Monitoring Committee and SSC to recommend 2009 specifications using landings information and survey indices through the 2007 fishing year. The results of the assessment update were as follows: (1) An estimated stock biomass for 2007, B_{2007} = 339.2 million lb (153,843 mt); and (2) projected yields for 2009 using $F_{target} = F_{2007} = 0.15$. Based on the updated 2007 estimate of bluefish stock biomass, the bluefish stock is not considered overfished: B_{2007} = 339.2 million lb (153,843 mt) is greater than the minimum biomass threshold, 1/2 B_{MSY} = 162 million lb (73,526 mt), and is actually above B_{MSY}. The bluefish stock, therefore, appears to be fully rebuilt. Estimates of fishing mortality have declined from 0.41 in 1991 to 0.15 in 2007. The new model results also conclude that the Atlantic stock of bluefish is not experiencing overfishing; i.e., the most recent F (F_{2007} = 0.15) is less than the maximum F overfishing threshold specified by SARC–41 (F_{MSY} = 0.19).

2009 TAL

The FMP specifies that the bluefish stock is to be rebuilt to B_{MSY} over a 9-year period (i.e., by the year 2010). The FMP requires the Council to recommend, on an annual basis, a level of total allowable catch (TAC) consistent with the rebuilding program in the FMP. An estimate of annual discards is deducted from the TAC to calculate the TAL that can be made during the year by the commercial and recreational fishing sectors combined. The TAL is composed of a commercial quota and a RHL. The FMP rebuilding program requires the TAC for any given year to be set based either on the target F resulting from the stock rebuilding schedule specified in the FMP (0.31 for 2009), or the F estimated in the most recent fishing year (F_{2007} = 0.15), whichever is lower. Therefore, the 2009 recommendation is based on an estimated F of 0.15. An overall TAC of 34.081 million lb (15,459 mt) was recommended as the coast-wide TAC by the Council at its August 2008 meeting to achieve the target fishing mortality rate, (F = 0.15) in 2009, and to ensure that the bluefish stock continues to remain above the long-term biomass target, B_{MSY}.

The proposed TAL for 2009 is derived by subtracting an estimate of discards of 4.725 million lb (2,143 mt), the average discard level from 2005–2007, from the TAC. After subtracting estimated discards, the 2009 TAL would be approximately 4 percent greater than the 2008 TAL, or 29.356 million lb (13,316 mt). Based strictly on the percentages specified in the FMP (17 percent commercial, 83 percent recreational), the commercial quota for 2009 would be 4.991 million lb (2,227 mt), and the RHL would be 24.366 million lb (11,052 mt) in 2009. In addition, up to 3 percent of the TAL may be allocated as RSA quota. The discussion below describes the recommended allocation of TAL between the commercial and recreational sectors, and the proportional adjustments to account for the recommended bluefish RSA quota.

Proposed Commercial Quota and Recreational Harvest Limit

The FMP stipulates that, in any year in which 17 percent of the TAL is less than 10.500 million lb (4,763 mt), the commercial quota may be increased up to 10.500 million lb (4,763 mt) as long as the recreational fishery is not projected to land more than 83 percent of the TAL in the upcoming fishing year, and the combined projected recreational landings and commercial quota would not exceed the TAL. At the Monitoring Committee meeting in July 2008, Council staff estimated projected recreational landings for the 2009 fishing year by using simple linear regression of the recent (2001–2007) temporal trends in recreational landings. At that time, recreational landings were projected to reach 24.719 million lb (11,212 mt) in 2009. Therefore, projected 2009 recreational landings were slightly greater than the initial 2009 RHL. As such, a transfer of quota to the commercial sector could not occur based on those data, resulting in a significantly reduced commercial quota for 2009. Any amount of transfer would likely have caused the TAL to be exceeded. This option, therefore, represents the preferred alternative recommended by the Council in its specifications document.

However, the Council also recommended that, if later projections based on more complete data indicate that recreational harvest is below 83 percent of the TAL, the difference be transferred to the commercial sector in the final specifications. NMFS Northeast Regional Office staff recently updated the recreational harvest projection using Marine Recreational Fisheries Statistics Survey (MRFSS) data through Wave 5 of 2008, and estimated the recreational harvest to be approximately 19.528 million lb (8,858 mt), or 67 percent of the TAL. Following the Council's recommendation, this would allow for a transfer to the commercial fishery of 4.838 million lb (2,194 mt), increasing the commercial quota from 4.991 million lb (2,227 mt) to 9.828 million lb (4,458 mt). This commercial quota is 27 percent greater than the 2008 quota, and 86 percent greater than actual 2008 commercial landings.

RSA

A request for proposals was published to solicit research proposals to utilize RSA in 2008 based on research priorities identified by the Council (February 8, 2008; 73 FR 7528). Oneresearch project that would utilize bluefish RSA has been preliminarily approved by the RA and forwarded to the NOAA Grants Office. Therefore, a 97,750–lb (44,339–kg) RSA quota is proposed for use by this project, or other potential research projects, during 2009. This proposed rule does not represent NOAA's approval of any RSA-related grant award, which will be included in a subsequent action. Consistent with the allocation of the bluefish RSA, the proposed commercial quota for 2009 would be adjusted to 9.731 million lb (4,414 mt) and the proposed RHL to 19.528 million lb (8,858 mt). Therefore, NMFS proposes a commercial quota of 9.731 million lb (4,414 mt), an RHL of 19.528 million lb (8,858 mt), and an RSA quota of 97,750 lb (44,339 kg) for the 2009 bluefish fishery.

Proposed Recreational Possession Limit

The Council recommends, and NMFS proposes, to maintain the current recreational possession limit of up to 15 fish per person to achieve the RHL.

Proposed State Commercial Allocations

The proposed state commercial allocations for the recommended 2009 commercial quota are shown in Table 1, based on the percentages specified in the FMP. These quotas do not reflect any adjustments for quota overages that may have occurred in some states in 2008. Any potential deductions for states that exceeded their quota in 2008 will be accounted for in the final rule.

TABLE 1. PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2009 (INCLUDING RSA DEDUCTIONS).

State	Percent Share	2009 Commercial Quota (lb)	2009 Commercial Quota (kg)
ME	0.6685	65,049	29,506
NH	0.4145	40,333	18,295
MA	6.7167	653,575	296,462
RI	6.8081	662,469	300,496
CT	1.2663	123,219	55,892
NY	10.3851	1,010,533	458,378
NJ	14.8162	1,441,702	653,956

TABLE 1. PROPOSED BLUEFISH COMMERCIAL STATE-BY-STATE ALLOCATIONS FOR 2009 (INCLUDING RSA DEDUCTIONS).—Continued

State	Percent Share	2009 Commercial Quota (lb)	2009 Commercial Quota (kg)
DE	1.8782	182,760	82,900
MD	3.0018	292,093	132,493
VA	11.8795	1,155,945	524,337
NC	32.0608	3,119,709	1,415,100
SC	0.0352	3,425	1,554
GA	0.0095	924	419
FL	10.0597	978,869	444,015
Total	100.0001	9,730,601	4,413,801

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Atlantic Bluefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

This action is exempt from review under E.O. 12866.

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this preamble and in the **SUMMARY**. A summary of the analysis follows. A copy of this analysis is available from the Council (see **ADDRESSES**).

No large entities participate in this fishery, as defined in section 601 of the RFA. Therefore, there are no disproportionate effects on small versus large entities. Information on costs in the fishery are not readily available and individual vessel profitability cannot be determined directly. Therefore, changes in gross revenues were used as a proxy for profitability. In the absence of quantitative data, qualitative analyses were conducted.

The participants in the commercial sector were defined using two sets of data. First, the Northeast dealer reports were used to identify any vessel that reported having landed 1 lb (0.45 kg) or more of bluefish during calendar year 2007 (the last year for which there is complete data). These dealer reports identified 709 vessels that landed bluefish in states from Maine to North Carolina. However, this database does not provide information about fishery participation in South Carolina, Georgia, or Florida. South Atlantic Trip Ticket reports were used to identify 856 vessels[1] that landed bluefish in North Carolina and 586 vessels that landed bluefish on Florida's east coast. Bluefish landings in South Carolina and Georgia were near zero, representing a negligible proportion of the total bluefish landings along the Atlantic Coast in 2007. In recent years, approximately 2,063 party/charter vessels may have been active in the bluefish fishery and/or have caught bluefish.

The IRFA in the Draft EA analyzed three alternatives (including the no action/status quo alternative) for allocating the TAL between the commercial and recreational sectors of the fishery. Consistent with the FMP's rebuilding schedule and the status of the resource as assessed by the revised SARC–41 report and the updated model projections, Alternative 1 was based on an overall TAL of 29.356 million lb (13,316 mt) and included an RSA quota of 97,750 lb (44,339 kg). Alternative 2 applies F = 0.17 based on a rebuilt bluefish stock, resulting in a TAL of 32.205 million lb (14,608 mt). Alternative 3, the no action/status quo alternative, includes an overall TAL of 28.156 million lb (12,771 mt). The preferred NMFS alternative, not analyzed in the Draft EA, also applies the TAL used in the Council's preferred alternative: 29.356 million lb (13,316 mt). Outside of the difference in the overall TAL specification, the alternatives differed only in the manner in which the TAL was allocated between the commercial and recreational sectors.

Alternative 1 would allocate 4.974 million lb (2,256 mt) to the commercial sector and 24.285 million lb (11,015 mt) to the recreational sector, reflecting the percentage allocations specified in the FMP (i.e., the 17–percent commercial/83–percent recreational sector split). Alternative 2 would allocate 7.486 million lb (3,396 mt) to the commercial sector and 24.719 million lb (11,212 mt) to the recreational sector. Alternative 3 would allocate 7.678 million lb (3,483 mt) to the commercial sector and 20.380 million lb (9,244 mt) to the recreational sector, reflecting the commercial harvest level that was in place in 2008 (i.e., status quo). The NMFS preferred alternative, not included in the Draft EA, would allocate 9.731 million lb (4,414 mt) to the commercial sector and 19.528 million lb (8,858 mt) to the recreational sector (Table 2), consistent with the Council's recommendation to utilize the recent updated projection for 2009 recreational harvest.

TABLE 2. PROPOSED 2009 ATLANTIC BLUEFISH SPECIFICATION ALTERNATIVES FOR TAL, COMMERCIAL QUOTA, AND RHL (MILLION LB).

	TAL	Commercial Quota	RHL
Alternative 1	29.356 (13,316 mt)	4.974 (2,256 mt)	24.285 (11,015 mt)
Alternative 2	32.205 (14,608 mt)	7.486 (3,396 mt)	24.719 (11,212 mt)
Alternative 3	28.156 (12,771 mt)	7.678 (3,483 mt)	20.380 (9,244 mt)
NMFS Preferred	29.356 (13,316 mt)	9.731 (4,414 mt)	19.528 (8,858 mt)

For the commercial sector, the recommended coast-wide quota is approximately 26 percent higher than the 2008 commercial quota, and 86 percent higher than 2008 commercial landings. Based on available data, approximately 32 percent of the TAL was not harvested during the 2008 fishing year. Only one state, New York, fully harvested its initial bluefish quota and received allocation transfers from other states in 2008. Four additional states, Massachusetts, Rhode Island, New Jersey, and North Carolina, harvested more than 50 percent of their bluefish quotas, while the remaining states only harvested between 0 and 40 percent of their allocations. Given these recent trends in landings, it is unlikely that the proposed TAL will be fully harvested in 2009, resulting in no overall coastwide economic impacts on the bluefish fishery. The economic impacts of the NMFS preferred

[1] Some of these vessels were identified in the Northeast dealer data; therefore, double counting is possible.

alternative are therefore likely to be neutral or positive relative to the status quo and other alternatives. For states that did not harvest their quotas in 2008, the proposed 2009 quotas are also not expected to result in any detrimental impacts. For states that exceeded their initial quota allocations in 2008, but received quota transfers from other states, the apparent economic losses would likely be mitigated by quota transfers during 2009, therefore resulting in no overall impacts. For states that exceeded their post-transfer quota allocations in 2008, any economic impacts would be solely due to the overage in landings.

Impacts on individual commercial vessels were assessed by conducting a threshold analysis using the dealer reports for the 709 vessels that landed bluefish from Maine through North Carolina in 2007. For Alternative 1, the 2009 commercial quota would be approximately 35 percent lower than in 2008. The analysis projected that there would be no revenue change for 36 vessels, while 602 vessels could incur slight revenue losses of less than 5 percent. Approximately 71 vessels would incur revenue losses of more than 5 percent, including 16 vessels that would incur revenue losses of at least 40 percent. The majority of these vessels have home ports in New York and New Jersey. Of the 71 vessels that may experience revenue losses of at least 5 percent, 30 percent had gross sales of $1,000 or less, and 58 percent had gross sales of $10,000 or less, indicating that dependence on income from fishing for some of these vessels is very small.

The impacts of Alternative 1 on commercial vessels in the South Atlantic were assessed using trip ticket data. The analysis concluded that, as a consequence of the 2009 allocation compared to 2007 landings, there would be revenue losses of 3.1 percent for vessels that land bluefish in North Carolina, but no loss of revenue for vessels that land in Florida.

The analysis of Alternative 2, which includes a 2.5–percent reduction in the commercial quota from 2008, concluded that there would be no revenue change for 147 vessels, while 513 vessels could incur slight revenue losses (less than 5 percent). Another 46 vessels could incur revenue losses of between 5 percent and 29 percent, while 3 vessels could incur revenue losses of greater than 29 percent. Most of the vessels projected to incur revenue losses of greater than 5 percent had home ports in New York and New Jersey. The analysis of impacts of Alternative 2 on commercial vessels in the South Atlantic concluded that no revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida.

The analysis of Alternative 3, which maintains the status quo for commercial quota, concluded that there would be no change in revenue for 147 vessels, while 517 vessels could incur slight revenue losses (less than 5 percent). Another 45 vessels could incur revenue losses of between 5 percent and 49 percent, and zero vessels would incur revenue losses of greater than 49 percent. The analysis of impacts of Alternative 3 on vessels in the South Atlantic concluded that no revenue reduction would be expected for vessels that land bluefish in North Carolina or Florida.

For the recreational sector of the fishery, there were no negative revenue impacts projected to occur with regard to the RHL, because the level considered in each alternative is equal to or above the recreational landings projected for 2009 (19.528 million lb (8,858 mt)). The recommended RHL is lower than the other alternatives, and lower than the RHL implemented in 2007 (21.163 million lb (9,599 mt)) and 2008 (20.414 million lb (9,260 mt)). This reduction in RHL, however, is commensurate with an apparent decline in recreational bluefish harvest during 2008, and projected to continue in 2009. Although there is very little empirical evidence regarding the sensitivity of charter/party anglers to regulation, it is anticipated that the proposed harvest levels will not affect the demand for charter/party boat trips.

The IRFA also analyzed the impacts on revenues of the proposed RSA amount and found that the social and economic impacts are minimal. Assuming that the full RSA of 97,750 lb (44,339 kg) is landed and sold to support the proposed research project (a supplemental finfish survey in the Mid-Atlantic), then all of the participants in the fishery would benefit from the anticipated improvements in the data underlying the stock assessments. Because the recommended overall commercial quota is higher than 2008 landings, no overall negative impacts are expected in the commercial sector. Based on recent trends in the recreational fishery, recreational landings will more than likely remain below the recommended harvest level in 2009.

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

Dated: February 23, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–4284 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 39

Monday, March 2, 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

Forest Service

Divide Ranger District, Rio Grande National Forest; Colorado; Big Moose Vegetation Management Project

AGENCY: Forest Service, Rio Grande National Forest, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Rio Grande National Forest proposes to harvest and regenerate timber stands killed by or infested with spruce beetle on the Divide Ranger District of the Rio Grande National Forest, and treat portions of the analysis area to promote aspen regeneration and healthy stands of young aspen. The proposed treatments would ensure moving towards or maintaining Forest Plan Desired Conditions and would contribute to societies need for wood fiber.

DATES: Comments concerning the scope of the analysis must be received by April 1, 2009. The draft environmental impact statement is expected November 2009 and the final environmental impact statement is expected March 2010.

ADDRESSES: Send written comments to Paul Hancock, Team Leader, Rio Grande National Forest, Divide Ranger District, 13308 W. Highway 160, Del Norte, CO 81132. Comments may also be sent via e-mail (with subject, Big Moose Vegetation Management Project Public Comment) to *comments-rocky-mountain-rio-grande-divide@fs.fed.us* or via facsimile to (719) 657–6035.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered; however, anonymous comments will not provide the respondent with standing to appeal the subsequent decision.

FOR FURTHER INFORMATION CONTACT: Paul Hancock at (719) 657–3321.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of the Big Moose Vegetation Management Project proposal is to meet the desired conditions and objectives of the Forest Plan. Action is needed to maintain or move existing forest conditions toward desired conditions. The proposed treatments would ensure moving towards or maintaining Forest Plan Desired Conditions and would contribute to societies need for wood fiber.

Proposed Action

The Rio Grande National Forest proposes to harvest and regenerate timber stands killed by or infested with spruce beetle on the Divide Ranger District southwest of Creede, Colorado, and treat portions of the analysis area to promote aspen regeneration and healthy stands of young aspen.

In order to promote aspen regeneration and healthy stands of young aspen, we propose to use prescribed fire. In some areas, prescribed fire would be used in conjunction with timber harvest methods to promote aspen regeneration. Other areas not treated with timber harvesting would be treated with prescribed fire to create a mosaic landscape where fuel loads would be reduced and openings would be created to promote additional areas for aspen regeneration.

Most of the proposed treatment areas would use the existing transportation system. New temporary road construction would occur. This work would be needed for access, improved safety, and additional resource protection. Non-system and new temporary roads would also be closed following their use.

Responsible Official

Thomas Malecek, District Ranger, Divide Ranger District, 13308 W. Highway 160, Del Norte, CO 81132.

Nature of Decision To Be Made

An environmental impact statement (EIS) that discloses the environmental consequences of implementing the proposed action and alternatives to that action will be prepared. A separate Record of Decision (ROD) will explain the responsible official's decision of whether or not to implement some level of timber sale harvest and other proposed activities on all, part, or none of the Analysis Area given considerations of multiple-use goals and objectives.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental impact statement. The Rio Grande National Forest invites public comment and participation regarding this project and subsequent EIS through scoping efforts in the form of this notice in the **Federal Register**; the Schedule of Proposed Actions (SOPA); public notice in the Valley Courier—the newspaper of record; and letters sent to potentially concerned public, tribal governments, and State and other Federal agencies. Scoping meetings will be announced in the Valley Courier. Information will also be posted on the Rio Grande National Forest Web site as the project progresses. Comments received during these scoping efforts will be considered in this EIS.

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, substantive comments should be provided prior to the close of the comment period and should clearly articulate the reviewer's ability to participate in subsequent administrative appeal or judicial review.

Authority: 40 CFR 1501.7 and 1508.22, 36 CFR 220.5(b) and Forest Service Handbook 1909.15, section 21.

Dated: February 19, 2009.

Thomas Malecek,

District Ranger/Field Office Manager.

[FR Doc. E9–4267 Filed 2–27–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Grain Inspection Advisory Committee Reestablishment

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice to reestablish committee.

SUMMARY: Notice is hereby given that the Secretary of Agriculture has reestablished the Grain Inspection, Packers and Stockyards Administration (GIPSA) Grain Inspection Advisory Committee (Advisory Committee). The Secretary of Agriculture has determined that the Advisory Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Terri L. Henry, Designated Federal Official, GIPSA, USDA, Rm. 1633-S, 1400 Independence Ave., SW., Washington, DC 20250–3604; Telephone (202) 205–8281; Fax (202) 690–2755; E-mail *Terri.L.Henry@usda.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the Advisory Committee is to provide advice to the Administrator of GIPSA with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*). Additional information on the Advisory Committee is available on the Internet at *http://www.gipsa.usda.gov.*

John Giler,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–4289 Filed 2–27–09; 8:45 am]

BILLING CODE 3410–KD–P

AMERICAN BATTLE MONUMENTS COMMISSION

SES Performance Review Board

AGENCY: American Battle Monuments Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the ABMC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Theodore Gloukhoff, Director of Personnel and Administration, American Battle Monuments Commission, Courthouse Plaza II, Suite 500, 2300 Clarendon Boulevard, Arlington, Virginia 22201–3367, Telephone Number: (703) 696–6908.

American Battle Monuments Commission SES Performance Review Board.

Mr. Wilbert Berrios, Director, Corporate Information, U.S. Army Corps of Engineers.

Mr. Michael Ensch, Chief, Operations and Regulatory CoP, U.S. Army Corps of Engineers.

Mr. Mohan Singh, Chief, Interagency & International Services Division, U.S. Army Corps of Engineers.

Theodore Gloukhoff,

Director, Personnel and Administration.

[FR Doc. E9–4310 Filed 2–27–09; 8:45 am]

BILLING CODE 6120–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Ave., NW., Washington, DC 20230; telephone (202) 482–1391.

Upcoming Sunset Reviews for April 2009

There are no Sunset Reviews scheduled for initiation in April 2009.

For information on the Department's procedures for the conduct of sunset reviews, *See* 19 CFR 351.218. This notice is not required by statute but is published as a service to the international trading community. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3, Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Dated: February 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–4342 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FOR FURTHER INFORMATION CONTACT: Sheila E. Forbes, Office of AD/CVD Operations, Customs Unit, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4697.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213(2004) of the Department of Commerce (the Department) regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Respondent Selection

In the event the Department limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, the Department intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and to make our decision

regarding respondent selection within 20 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. The Department invites comments regarding the CBP data and respondent selection within 10 calendar days of publication of the **Federal Register** initiation notice.

Opportunity to Request a Review: Not later than the last day of March 2009,[1] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in March for the following periods:

	Period of review
Antidumping Duty Proceeding	
Brazil:	
Certain Hot-Rolled Carbon Steel Flat Products, A–351–828	3/1/08–2/28/09
Orange Juice, A–351–840	3/1/08–2/28/09
Canada: Iron Construction Castings, A–122–503	3/1/08–2/28/09
France: Brass Sheet & Strip, A–427–602	3/1/08–2/28/09
Germany: Brass Sheet & Strip, A–428–602	3/1/08–2/28/09
India: Sulfanilic Acid, A–533–806	3/1/08–2/28/09
Italy: Brass Sheet & Strip, A–475–601	3/1/08–2/28/09
Japan: Stainless Steel Butt-Weld Pipe Fittings, A–588–702	3/1/08–2/28/09
Russia: Silicon Metal, A–821–817	3/1/08–2/28/09
Spain: Stainless Steel Bar, A–469–805	3/1/08–2/28/09
Taiwan: Light-Walled Welded Rectangular Carbon Steel Tubing, A–583–803	3/1/08–2/28/09
Thailand: Welded Carbon Steel Pipe and Tube, A–549–502	3/1/08–2/28/09
The People's Republic of China:	
Chloropicrin, A–570–002	3/1/08–2/28/09
Glycine, A–570–836	3/1/08–2/28/09
Sodium Hexametaphosphate, A–570–908	9/14/07–2/28/09
Tissue Paper Products, A–570–894	3/1/08–2/28/09
Countervailing Duty Proceeding	
France: Uranium,[2] C–427–819	1/1/08–12/31/08
India: Sulfanilic Acid, C–533–807	1/1/08–12/31/08
Iran: In-Shell Pistachio Nuts, C–507–501	1/1/08–12/31/08
Turkey: Welded Carbon Steel Pipe and Tube, C–489–502	1/1/08–12/31/08

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b) of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters.[3] If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Please note that, for any party the Department was unable to locate in prior segments, the Department will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to section 351.303(f)(3)(ii) of the regulations.

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003), the Department has clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders. *See also* the Import Administration Web site at *http://ia.ita.doc.gov*.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Operations, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each

[1] Or the next business day, if the deadline falls on a weekend, Federal holiday or any other day when the Department is closed.

[2] On February 4, 2009 (74 FR 6013), this order was inadvertently listed in the opportunity notice for February anniversary cases. This order has been revoked and the effective date of the revocation is May 14, 2001 (72 FR 29301, 05/25/2007).

[3] If the review request involves a non-market economy and the parties subject to the review request do not qualify for separate rates, all other exporters of subject merchandise from the non-market economy country who do not have a separate rate will be covered by the review as part of the single entity of which the named firms are a part.

request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of March 2009. If the Department does not receive, by the last day of March 2009, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: February 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations

[FR Doc. E9–4347 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–822]

Stainless Steel Sheet and Strip in Coils from Mexico; Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Due to the fact that the Department of Commerce (the Department) requires additional information from the respondent, ThyssenKrupp Mexinox S.A. de C.V. and Mexinox USA, Inc. (collectively, Mexinox), in order to complete our analysis, the Department finds that it is not practicable to complete the preliminary results of this review within the original time frame. Accordingly, the Department is extending fully the time limit for completion of the preliminary results of this administrative review until no later than July 31, 2009, which is 365 days from the last day of the anniversary month.

EFFECTIVE DATE: March 2, 2009.

FOR FURTHER INFORMATION CONTACT: Patrick Edwards or Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8029 or (202) 482–7924, respectively.

Background

On July 30, 2008, the Department received a timely request from Mexinox for revocation from the antidumping duty order on certain stainless steel sheet and strip (S4) in coils from Mexico. On July 31, 2008, the Department received a timely request from Allegheny Ludlum Corporation, AK Steel Corporation, and North American Stainless, to conduct an administrative review of the antidumping duty order on S4 in coils from Mexico. On August 26, 2008, the Department published a notice of initiation of this administrative review, covering the period of July 1, 2007 to June 30, 2008. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 73 FR 50308 (August 26, 2008). The current deadline for the preliminary results of this review is April 2, 2009.

Extension of Time Limits for Preliminary Results

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results of an administrative review within 245 days after the last day of the anniversary month of an order for which a review is requested. However, if it is not practicable to complete the review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order for which a review is requested.

The Department finds that it is not practicable to complete the preliminary results of this review within the original time frame because additional information from the respondent, Mexinox, is necessary to complete our analysis and we will not have sufficient time to obtain and analyze the new information prior to the current deadline for the preliminary results. Accordingly, the Department is extending fully the time limit for completion of the preliminary results of this administrative review until no later than July 31, 2009. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.

This extension is issued and published in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: February 23, 2009.

John M. Andersen,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E9–4343 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN12

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Application for an Exempted Fishing Permit

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

ACTION: Notice; intent to issue exempted fishing permits, request for comment.

SUMMARY: NMFS announces the intent to issue exempted fishing permits (EFPs) to Pacific whiting shoreside vessels and first receivers that participate in a maximized retention and monitor program for the 2009 Pacific whiting shoreside fishery. EFPs are needed to allow vessels to retain catch in excess of the cumulative limits and to retain prohibited species until offloading. EFPs are also needed to allow first receivers to possess Pacific whiting deliveries with prohibited species and catch that is in excess of cumulative limits, and to used hopper type scales to derive accurate catch weights prior to sorting. Issuance of the EFPs would allow NMFS to collect catch data on incidentally caught species, including salmonids listed under the Endangered Species Act, and would allow new components of an overall monitoring program to be investigated before implementation of a regulatory program.

DATES: Comments must be received by March 17,2009.

ADDRESSES: You may submit comments, identified by RIN 0648–XN12 by any one of the following methods:

- Fax: 206–526–6736, Attn: Becky Renko.
- Mail: Barry A. Thom, Acting Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070, Attn: Becky Renko.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Kevin Duffy at (206) 526–6140.

SUPPLEMENTARY INFORMATION: This action is authorized by the Magnuson–Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745 which states that EFPs may be used to authorize fishing activities that would otherwise be prohibited in order to collect data among other activities. On January 14, 2009, NMFS Northwest Region sent a letter to the Pacific Fishery Management Council (Council) that included a proposal for issuance of EFPs to vessels and first receivers participating in the 2009 Pacific whiting shoreside fishery. If issued, the EFPs would provide for a maximized retention and monitoring program for the Pacific whiting shoreside fishery. The proposed maximized retention and monitoring program regulations are intended to allow for the Pacific whiting shoreside fishery to be efficiently prosecuted while providing accurate catch data such that the Endangered Species Act and Magnuson–Stevens Fishery Conservation and Management Act requirements for this fishery are adequately met.

The issuance of EFPs would allow approximately 40 vessels to delay sorting of groundfish catch and to retain catch in excess of cumulative trip limits and prohibited species catch until offloading. These activities are otherwise prohibited by regulations at 50 CFR 660.306(a)(10) and (a)(2), respectively.

Additionally, issuance of the EFPs to approximately 15 first receivers (generally land–based processing facilities) would allow first receivers to possess more than a single cumulative limit of a particular species, per vessel, per applicable cumulative limit period. The possession of catch in excess of the cumulative limits is otherwise prohibited by regulations at 50 CFR 660.306(a)(10). In addition, the EFPs would include an allowance for first receivers to use hopper type scales to derive an accurate total catch weight prior to sorting. Regulations pertaining to sorting at § 660.370(h)(6) and prohibitions at § 660.306(a)(7) require vessels to sort the catch before weighing.

Issuance of the EFPs would allow for the collection of information on the catch of salmon, non–whiting groundfish, and other non–groundfish species incidentally taken with Pacific whiting. These data are needed to monitor the attainment of the shore–based whiting allocation while assuring that the fishery specifications (bycatch limits, species allocations, OYs, and biological opinion thresholds) are not exceeded. Because whiting flesh deteriorates rapidly once the fish are caught, whiting must be minimally handled and immediately chilled to maintain the flesh quality. Allowing Pacific whiting shoreside vessels to retain unsorted catch will also enable whiting quality to be maintained.

At the June 2007 Pacific Fishery Management Council (PFMC) meeting, the PFMC recommended that NMFS implement a maximized retention program in Federal regulations that would allow full retention of Pacific whiting catch by the vessels and delivered to first receivers on shore. NMFS Northwest Region is in the process of transitioning the Pacific whiting shoreside fishery from a maximized retention and monitoring program conducted under EFPs to a Federal regulatory program. Though it was expected that the program would be in place at the start of the 2009 fishing season, it will not be possible given the complexity in developing the program. The EFPs, as proposed, would be used to investigate the new components of the overall monitoring program before regulatory implementation. The EFPs would be in effect until the effective date of the new Federal maximized retention and monitoring program, or December 31, 2009, if the regulatory program is not in effect by that time.

Proposed Federal regulations for a maximized retention and monitoring program would require Pacific whiting shoreside vessels to dump unsorted catch directly below deck and would allow unsorted catch to be landed, providing that an electronic monitoring system (EMS) is used on all fishing trips to verify retention of catch at sea. The EMS is an effective tool for accurately monitoring catch retention and identifying the time and location of discard events. The EFPs would include provisions for EMS, paid for by the vessels, similar to the 2008 EFP and similar to the proposed Federal regulatory program.

Proposed Federal regulations for a maximized retention and monitoring program would also require first receivers to have on shore monitoring conducted by catch monitors. Catch monitors are third party employees, paid for by industry, and trained to NMFS standards. The EFP would include provisions for third party catch monitors from a NMFS specified provider. Like the proposed Federal regulatory program, catch monitors used under the EFPs would be trained in techniques that would be used for the verification of fish ticket data and in species identification. Catch monitor duties include overseeing the sorting, weighing, and recordkeeping process, as well as gathering information on incidentally caught salmon. Catch monitors verify the accuracy of electronic fish ticket data used to manage the Pacific whiting shoreside fishery such that inaccurate or delayed information does not result in any fishery specifications (bycatch limits, species allocations, OYs, and biological opinion thresholds) being exceeded.

In 2008, the first receiver EFPs required each first receiver to have one catch monitor on each day that Pacific whiting deliveries were received. In June 2008, to insure the integrity of sector–specific bycatch limits, the Council recommended as part of the 2009–2010 harvest specifications and management measures, that NMFS increase the catch monitor coverage in the proposed monitoring program to full coverage. With full coverage all Pacific whiting deliveries are monitored by catch monitors (the number of individual catch monitors per facility would vary depending on the hours of operation and the number of Pacific whiting deliveries received each day). NMFS intends to implement the Council's recommendations for full catch monitoring coverage in its rulemaking for a maximized retention and monitoring program. To be consistent with Council recommendations, the first receiver EFPs would also require full catch monitor coverage for 2009.

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

Dated: February 24, 2009.

Emily H. Menashes

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

[FR Doc. E9–4299 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN61

Mid-Atlantic Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Mid-Atlantic and the New England Fishery Management Councils' (MAFMC/NEFMC) Joint Spiny Dogfish Committee.

DATES: The meeting will be held on Thursday, March 19, 2009, from 9 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Renaissance Philadelphia Airport Hotel, 500 Stevens Drive, Philadelphia, PA 19113; telephone: (610) 521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council, 300 S. New Street, Room 2115, Dover, DE 19904; telephone: (302) 674–2331, extension 19.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to develop recommendations on a range of issues that will potentially amend the Spiny Dogfish Fishery Management Plan (FMP). The issues that may be discussed at the upcoming meeting include, but are not limited to:

Adding a research set-aside allocation option of up to 3% of the quota for use during annual specification setting

•Developing commercial quota allocation measures that would serve as alternatives to the current seasonal allocation system

•Establishing an approvable biomass rebuilding target

•Establishing a male-only dogfish fishery

•Considering the possibility of including smooth dogfish in the current FMP

•Establishing a limited access permit for spiny dogfish

Interested parties are welcome to attend the meeting. At the discretion of the Committee Chair, public comments may be taken during and/or just before the conclusion of the meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to M. Jan Bryan, (302) 674–2331 ext 18, at least 5 days prior to the meeting date.

Dated: February 25, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–4301 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN65

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council's (Council) Herring Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Tuesday, March 24, 2009, at 9:30 a.m.

ADDRESSES: The meeting will be held at theClarion Hotel, 1230 Congress Street, Portland, ME; telephone: (207) 774–5611; fax: (207) 871–0510.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee's agenda are as follows:

1. Continue development of management alternatives to be included in Amendment 4 to the Atlantic Herring Fishery Management Plan (FMP);

2. Develop alternatives for annual catch limits (ACLs) and accountability measures (AMs) and discuss related changes to the Atlantic herring fishery specification process;

3. Continue discussion and development of management alternatives related to catch monitoring, which may include: monitoring and reporting requirements for herring vessels and processors, observer coverage and at-sea monitoring, shore-side monitoring and sampling, vessel monitoring system (VMS) requirements, and other measures.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: February 25, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–4303 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN62

Western Pacific Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings and hearings.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold meetings of its Scientific and Statistical Committee (SSC), American Samoa Archipelago Fishery Ecosystem Plan Regional Ecosystem Advisory Committee (REAC), Advisory Panel (AP), and Plan Team (PT). The Council will also hold its 144th meeting to consider advisory group recommendations and take actions on fishery management issues in the Western Pacific Region.

DATES: The 100th SSC Meeting will be held on March 17–19, 2009, and the American Samoa REAC will be held on March 20, 2009. The Advisory Panel and Plan Team will meet on March 23, 2009. The 144th Council meeting will be held on March 23–26, 2009. All meetings will be held in Pago Pago, American Samoa. For specific times and agendas, see **SUPPLEMENTARY INFORMATION**.

ADDRESSES: The 100th SSC, REAC, PT and 144th Council meetings will be held at the Governor H. Rex Lee Auditorium (Fale Laumei), Department of Commerce Government of American Samoa, Pago Pago, American Samoa; telephone: (684) 633–5155. The Council Standing Committee and AP meetings will be held at Sadie's by the Sea, Pago Pago, American Samoa; telephone: (684) 633–5981.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: (808) 522–8220.

SUPPLEMENTARY INFORMATION: In addition to the agenda items listed here, the SSC, REAC, AP, PT and Council will hear recommendations from Council advisory groups. Public comment periods will be provided throughout the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

Schedule and Agenda for SSC Meeting:

8:30 a.m.–5 p.m. Tuesday, March 17, 2009

1. Introductions
2. Approval of Draft Agenda and Assignment of Rapporteurs
3. Status of the 99th SSC Meeting Recommendations
4. Report from the National Marine Fisheries Service (NMFS) Pacific Islands Fisheries Science Center (PIFSC) Director
5. Program Planning
A. Annual Catch Limits
1. Plan Team Risk Rankings (Action Item)
B. Western Pacific Stock Assessment Review (WPSAR) for Hawaii Bottomfish
C. Impacts of New Monuments
1. Review of U.S. Historical Catch, Effort & Permits
2. Non-commercial Fishing
a. Traditional Indigenous Fishing
b. Sustenance Fishing
c. Recreational Fishing
d. Research Fishing
3. Recommendations on Prohibiting Commercial Fishing in National Marine Monuments (Action Item)
4. Deep-Sea Mining and Fishery Impacts
5. Permits and Reporting
6. Research and Monitoring
D. Review of Coral Reef Ecosystem Division Survey Methodologies and Data Analysis
E. Public Comment
F. Discussion and Action
6. Insular Fisheries
A. American Samoa Archipelago
1. Report on Coral Reef Fisheries
2. Report on Bottomfish Fisheries
B. Reports from Samoa & Cook Islands on Insular Fisheries
C. Recommendation on Commonwealth of the Northern Mariana Islands (CNMI) Management Authority of Fisheries Resources (Action Item)
D. Seamount Groundfish Moratorium Review
E. Council Advisory Group Reports
F. Public Comment
G. Discussion and Action

8:30 a.m.–5 p.m. Wednesday, March 18, 2009

7. Pelagic Fisheries
A. Longline Management
1. Update on Hawaii Shallow-set Fishery
2. Recommendation on American Samoa Longline Fishery Management Measures to Minimize Turtle Interactions (Action Item)
3. Regional Fishery Management Organization (RFMO) Quotas (Action Item)
B. Non-Longline Management
1. Recommendation on Cross Seamount/NOAA Weather Buoy Fishery Limited Entry Program (Action Item)
2. Recommendation on Measures to Manage Purse Seine Fishing on Fishery Aggregation Devices (FADs) and FAD Registration in U.S. EEZ Waters of the Western Pacific (Action Item)
C. American Samoa and Hawaii Longline Quarterly Reports
D. Proposals for Additional Marine Reserves on the High Seas
E. Reports from Samoa & Cook Islands on Pelagic Fisheries Development
F. International Fisheries/Meetings
1. Western Central Pacific Fishery Commission (WCPFC) Conservation and Management Measures
2. Inter-American Tropical Tuna Commission (IATTC) Conservation and Management Measures
3. North Pacific Seamount RFMO
G. Pelagic Plan Team Recommendations
H. Public Comment
I. Discussion and Action
8. Protected Species
A. Report on Japan Sea Turtle Meetings
B. Report on Fixed Net/Sea Turtle Interaction Workshop
C. Species Recovery Credits
D. Update on Protected Species Petitions
1. Monk Seal Critical Habitat Designation
2. Loggerhead Distinct Population Segment (DPS) Response
3. Leatherback Critical Habitat
4. Take Reduction Team (TRT) for False Killer Whales
E. Public Comment
F. Discussion and Action

8:30 a.m.–5 p.m. Thursday, March 19, 2009

9. Other Business
A. Report on National SSC Workshop
B. 101st SSC Meeting
C. National Standard 2 Comments
10. Summary of SSC Recommendations to the Council

Schedule and Agenda for REAC Meeting:

9 a.m.–4 p.m. Friday, March 20, 2009

1. Welcome and Introduction of Members
2. Approval of Draft Agenda
3. Status of 2008 REAC Meeting Outcomes
4. Synopsis of Upcoming 144th Council Meeting Actions
a. Recommendation for American Samoa Fishery Management Measures to Minimize Turtle Interactions
b. Recommendation on Measures to Manage Purse Seine Fishing on FADs and FAD Registration in U.S. EEZ Waters of the Western Pacific
c. Risk ranking of American Samoa Non-pelagic Species
5. Community Marine Management Forum
a. Report on Fishery Development in American Samoa
b. Identification of Marine, Education and Training Priorities
c. Eco-labeling Activities
d. Report on Coastal Erosion Impacts on Marine Ecosystems
e. Report on FADs
f. Review of New Monument Provisions
i. Non-Commercial Fishing
ii. Permits And Reporting
iii. Deep Sea Mining And Ecosystem Impacts
iv. Research and Monitoring
6. Public Comments
7. REAC Discussion and Action

Schedule and Agenda for PT Meeting:

8:30 a.m.–4 p.m., Monday, March 23, 2009

1. Welcome and Introductions
2. Approval of Draft Agenda
3. Upcoming 144th Council Meeting Actions
a. Management Unit Species Risk Ranking of Non-pelagic Species
b. Recommendation for American Samoa Longline Fishery Management Measures to Minimize Turtle Interactions
b. Recommendation on Measures to Manage Purse Seine Fishing on FADs and FAD Registration in U.S. EEZ Waters of the Western Pacific
c. Fishery Development
1. Cooperative Research
2. American Samoa Marine Conservation Plan
3. Identification of Marine, Education and Training Priorities

4. Review of Annual Report Module for American Samoa
a. Bottomfish
b. Coral Reef
c. Precious Corals
d. Crustaceans
5. Public Comments
6. Plan Team Discussion and Recommendations

Schedule and Agenda for AP Meeting:

4:30 p.m–9 p.m., Monday, March 23, 2009

1. Welcome and Introduction of Members
2. Introduction to the Council and Magnuson Stevens Act
3. Status Report on 2008 Advisory Panel Recommendations
4. Emerging Fishery Issues
5. Community Marine Management
a. Fishery Development in American Samoa
b. Identifying Marine Education and Training Priorities
c. Eco-Labeling and Seafood Safety
d. Village Monitoring
6. Upcoming 144th Council Meeting Actions
a. Recommendation for American Samoa Longline Fishery Management Measures to Minimize Turtle Interactions
b. Recommendation on Measures to Manage Purse Seine Fishing on FADs and FAD Registration in U.S. EEZ Waters of the Western Pacific
c. Risk-ranking of American Samoa Non-Pelagic Management Unit Species
d. Western Central Pacific Fisheries Commission Requirements
e. Review of New Monument Provisions
7. Public Comment
8. Discussion and Action

Schedule and Agenda for 144th Council Meeting:

Monday, March 23, 2009

Standing Committee Meetings

1. *10 a.m.–12 noon* Executive and Budget Standing Committee

8:30 a.m.–6 p.m. Tuesday, March 24, 2009

1. Introductions
2. Welcome from American Samoa Governor
3. Approval of Agenda
4. Approval of 143rd Meeting Minutes
5. Agency Reports
A. NMFS
1. Pacific Islands Regional Office (PIRO)
2. PIFSC
B. NOAA General Counsel
C. U.S. Fish and Wildlife Service
D. Enforcement
1. U.S. Coast Guard
2. NOAA Office for Law Enforcement
3. Status of Violations
E. Public Comment
F. Council Discussion and Action
6. New Monument
A. Review of U.S. Historical Catch, Effort & Permits
1. Non-Commercial Fishing
a. Traditional Indigenous Fishing
b. Sustenance Fishing
c. Recreational Fishing
d. Research
2. Recommendations on Prohibiting Commercial Fishing in National Marine Monuments (Action Item)
3. Permits And Reporting
4. Deep Sea Mining And Ecosystem Impacts
5. Research and Monitoring
6. Council Member Perspectives
7. Program Planning
A. Program Planning and Research
1. Update on Small-scale and Traditional Fishing Research Recommendations
2. Identification of Marine Conservation Areas
B. Recreational Fishing
1. Report from the Pago Pago Game Fish Association
2. Recommendation on Recreational Fishing in Protected Areas (Action Item)
C. Update on Western Pacific Marine and Training (MET) Program
D. Status of Eco-labeling U.S. Fisheries
E. Update on Legislation
F. NOAA/NMFS Transition Plan
1. Council Coordination Committee and Council Outreach
2. Non-Governmental Organizations
G. Update on Status of Fishery Management Plan (FMP) actions
H. Recommendation on Annual Catch Limits for Western Pacific Fishery Stocks (Action Item)
1. Plan Team Risk Ranking
I. SSC Recommendations
J. Public Hearing
K. Council Discussion and Action
8. Public Comment on Non-agenda Items

6:30 p.m.–9 p.m. Tuesday, March 24, 2009

Fishers Forum
A. Welcome and Introductions
B. Panel to discuss Fisheries Development in American Samoa and Surrounding Region—Opportunities and Obstacles
C. Public Question and Answer Period
D. Closing Remarks

8:30 a.m.–6:30 p.m. Wednesday, March 25, 2009

9. American Samoa Archipelago
A. Motu Lipoti
B. Enforcement Issues
C. Report on PIFSC Coral Reef Ecosystem Division Fish Survey Methodologies and Data Analysis
D. Report on Coral Reef Fisheries
E. Report on Bottomfish Fishery
F. American Samoa Community Issues
1. MET Priorities
2. Turtle Conservation Activities
3. Community Vessel Monitoring Project
4. Lunar Calendar Workshop
5. Coastal America
G. Education and Outreach Initiatives
H. Review of Deeds of Cession
I. Report on Fishers Forum
J. Report on American Samoa Advisory Panel Meeting
K. Report on American Samoa Plan Team Meeting
L. Report on American Samoa REAC Meeting
M. SSC Recommendations
N. Public Comment
O. Council Discussion and Action
10. Mariana Archipelago
A. Arongol Faleey and Isla Informe
1. Commonwealth of the Northern Marianas Islands (CNMI)
2. Guam
B. Enforcement Issues
1. CNMI
2. Guam
C. Recommendation on CNMI Management Authority of Fisheries Resources (Action Item)
D. Longline Fisheries Development
E. Marianas Community Issues
1. Turtle Conservation Activities
2. Marine Education and Training Priorities
3. Status of Military Buildup
4. Visa Issues
5. Chamolinian Initiative
F. Education and Outreach Initiatives
G. SSC Recommendations
H. Public Hearing
I. Council Discussion and Action
11. Hawaii Archipelago and PRIA
A. Moku Pepa
B. Enforcement Issues
C. Hawaii Community Issues
1. Aha Kiole Community Final Report
2. Marine Education and Training Priorities
3. Turtle Conservation Activities
4. Submerged/Ceded Lands

8:30 a.m.–5 p.m. Thursday, March 26, 2009

Hawaii Archipelago and PRIA Continues
D. Education and Outreach Initiatives
E. Seamount Groundfish Moratorium Review
F. Main Hawaiian Islands Bottomfish
1. Status of the Total Allowable Catch (TAC)

2. Western Pacific Stock Assessment Review Process for Hawaii Bottomfish
3. Bottomfish TAC Specification (Action Item)
G. SSC Recommendations
H. Public Hearing
I. Council Discussion and Action
12. Pelagic & International Fisheries
A. American Samoa and Hawaii Longline Quarterly Reports
B. Update on Hawaii Shallow-set Longline Fishery Management
C. Report on Video Monitoring Project
D. Report on The Secretariat of the Pacific Community (SPC)-implemented Pacific Tuna Tagging Programme (PTTP)
E. Reports of International Fisheries Meetings
1. WCPFC Conservation and Management Measures
2. IATTC Conservation and Management Measures
3. North Pacific Seamount RFMO
4. Fixed Net/Sea Turtle Interaction Workshop
5. International Science Committee (ISC) Bycatch Working Group
6. Department of State/NMFS/Councils Memorandum of Understanding
F. Recommendations for Management of WCPFC Longline Bigeye Tuna Quota
1. U.S. Quota
2. Territories/Commonwealth Quota
G. Pelagic Action Items
1. Longline Management
a. Recommendation for American Samoa Longline Fishery Management Measures to Minimize Turtle Interactions (Action Item)
2. Non-Longline Management
a. Recommendations for Limited Entry Program and Control Date for the Cross Seamount/NOAA Weather Buoy Fishery (Action Item)
b. Recommendation on Measures to Manage Purse Seine Fishing on FADs and FAD Registration in U.S. EEZ Waters of the Western Pacific (Action Item)
H. Purse Seine Fishery
1. Report on U.S. Fleet
2. Treaty Review
3. WCPFC Conservation Measures
I. Pelagics Plan Team Recommendations
J. SSC Recommendations
K. Public Hearing
L. Council Discussion and Action
13. Administrative Matters & Budget
A. Financial Reports
B. Administrative Reports
C. Meetings and Workshops (Calendar)
1. Report on Council member Training
2. Council Coordinating Committee Interim Meeting Report
D. Council Family Changes
E. Review and Approval of the Four Western Pacific Marine Conservation Plans (Action Item)
F. Standard Operating Procedures and Protocols (SOPP) Proposed Rule
G. Correcting/Addressing Public Perception About The Western Pacific Regional Fishery Management Council
H. Standing Committee Recommendations
I. Public Comment
J. Council Discussion and Action
14. Other Business
A. Next Meeting

Non-emergency issues not contained in this agenda may come before the Council for discussion and formal Council action during its 144th meeting. However, Council action on regulatory issues will be restricted to those issues specifically listed in this document and any regulatory issue arising after publication of this document that requires emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522–8220 (voice) or (808) 522–8226 (fax), at least 5 days prior to the meeting date.

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

Dated: February 25, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–4302 Filed 2–27–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Federal Acquisition Regulation; Submission for OMB Review; Progress Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning progress payments. A request for public comments was published in the **Federal Register** at 73 FR 71625, November 25, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before April 1, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (VPR), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT Mr. Edward Chambers, Contract Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of statutory and regulatory requirements concerning progress payments.

B. Annual Reporting Burden

Respondents: *27,000*.
Responses Per Respondent: *32*.
Annual Responses: *864,000*.
Hours Per Response: *.55*.
Total Burden Hours: *475,200*.

OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VPR), Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: February 19, 2009.

Al Matera,

Director, Contract Policy Division.

[FR Doc. E9–4340 Filed 2–27–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Office of the Secretary

DoD Medicare-Eligible Retiree Health Care Board of Actuaries

AGENCY: Department of Defense.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the DoD Medicare-Eligible Retiree Health Care Board of Actuaries will take place:

DATES: Friday, July 31, 2009 from 1–5 p.m.

ADDRESSES: 4040 N. Fairfax Drive, Suite 270, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Margot Kaplan, 703–696–7404.

SUPPLEMENTARY INFORMATION: *Purpose of the Meeting:* The purpose of the meeting is to execute the provisions of Chapter 56, Title 10, United States Code (10 U.S.C. 1114 *et seq*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of benefits under DoD retiree health care programs for Medicare-eligible beneficiaries.

Agenda

Meeting objective (Board).

Approve actuarial assumptions and methods needed for calculating:

FY 2011 per capita full-time and part-time normal cost amounts.

September 30, 2008 unfunded liability (UFL).

October 1, 2009 Treasury UFL amortization payment and normal cost payment.

Trust Fund Update (DFAS).

Medicare-Eligible Retiree Health Care Fund Update (Tricare Management Activity).

September 30, 2007 Actuarial Valuation Results (DoD Office of the Actuary).

September 30, 2008 Actuarial Valuation (DoD Office of the Actuary).

Decisions (Board).

Approve actuarial assumptions and methods needed for calculating:

FY 2011 per-capita full-time and part-time normal cost amounts.

September 30, 2008 UFL.

October 1, 2009 Treasury UFL amortization payment and normal cost payment.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165 and the availability of space, this meeting is open to the public. Seating is on a first-come basis.

Committee's Designated Federal Officer or Point of Contact: Persons desiring to attend the DoD Medicare-Eligible Retiree Health Care Board of Actuaries meeting or make an oral presentation or submit a written statement for consideration at the meeting, must notify Margot Kaplan at 703–696–7404 by July 10, 2009. For further information contact Margot Kaplan at the DoD Office of the Actuary, 4040 N. Fairfax Drive, Suite 308, Arlington, VA 22203.

Dated: February 24, 2009.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. E9–4326 Filed 2–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Uniform Formulary Beneficiary Advisory Panel

AGENCY: Department of Defense, Assistant Secretary of Defense (Health Affairs).

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended) and the Sunshine in the Government Act of 1976 (U.S.C. 552b, as amended) the Department of Defense announces the following Federal Advisory Committee Meeting of the Uniform Formulary Beneficiary Advisory Panel (hereafter referred to as the Panel).

DATES: March 26, 2009 from 8 a.m. to 4 p.m.

ADDRESSES: Naval Heritage Center Theater, 701 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: LtCol Thomas Bacon, Designated Federal Officer, Uniform Formulary Beneficiary Advisory Panel, Skyline 5, Suite 810, 5111 Leesburg Pike, Falls Church, VA 22041–3206; Telephone: (703) 681–2890; Fax: (703) 681–1940; E-mail Address: *baprequests@tma.osd.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The Panel will review and comment on recommendations made to the Director, TRICARE Management Activity, by the Pharmacy and Therapeutics (P&T) Committee regarding the Uniform Formulary.

Meeting Agenda: Sign-In; Welcome and Opening Remarks; Public Citizen Comments; Scheduled Therapeutic Class Reviews—Long-acting beta agonists (LABAs); Inhaled corticosteroids (ICS), Combination long-acting beta agonists/inhaled steroids (LABA/ICS Combos) and Designated newly approved drugs; Panel Discussions and Vote, and comments following each therapeutic class review.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.140 through 102–3.165, and the availability of space this meeting is open to the public. Seating is limited and will be provided only to the first 220 people signing in. All persons must sign in legibly.

Administrative Work Meeting: Prior to the public meeting the Panel will conduct an Administrative Work Meeting from 7 a.m. to 7:50 a.m. to discuss administrative matters of the Panel. The Administrative Work Meeting will be held at the Naval Heritage Center Conference Room, 701 Pennsylvania Avenue, NW., Washington DC 20004. Pursuant to 41 CFR 102–3.160, the Administrative Work Meeting will be closed to the public.

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the membership of the Panel at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Panel's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp.*

Written statements that do not pertain to the scheduled meeting of the Panel may be submitted at any time. However,

if individual comments pertain to a specific topic being discussed at a planned meeting then these statements must be submitted no later than five (5) business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Public Comments: In addition to written statements, the Panel will set aside one (1) hour for individual or interested groups to address the Panel. To ensure consideration of their comments, individuals and interested groups should submit written statements as outlined in this notice, but if they still want to address the Panel then they will be afforded the opportunity to register to address the Panel. The Panel's Designated Federal Officer will have a ''Sign Up Roster'' available at the Panel meeting, for registration on a first-come, first-serve basis. Those wishing to address the Panel will be given no more than five (5) minutes to present their comments, and at the end of the one (1) hour time period no further public comments will be accepted. Anyone who signs up to address the Panel but is unable to do so due to the time limitation may submit their comments in writing; however, they must understand that their written comments may not be reviewed prior to the Panel's deliberation. Accordingly, the Panel recommends that individuals and interested groups consider submitting written statements instead of addressing the Panel.

February 24, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–4329 Filed 2–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0028]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Finance and Accounting Service (DFAS) is proposing to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 1, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Send comments to the Defense Finance and Accounting Service, FOIA/PA Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 589–3510.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service systems of notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended is set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7332c

SYSTEM NAME:

Bankruptcy Processing Files (August 24, 2005, 70 FR 49587)

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–2055.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Social Security number (SSN), court notices, financial statements, certificates for deductions; agreements, military pay vouchers, correspondence between DFAS General Counsel and subordinate units, United States Attorneys, United States District Courts, and other Government agencies relevant to the proceeding.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations, 31 U.S.C. 3711, Collection and Compromise; 11 U.S.C. Chapter 5, Creditors and Claims; and E.O. 9397 (SSN).''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete sentence and replace with ''The 'DoD Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Temporary records are cut off at the end of the calendar year and retained from 180 days to 2 years after cut off. Permanent records are cutoff at the end of the calendar year and retained on site for 5 years and then retired to the appropriate Federal Records Center. Records are destroyed by degaussing, shredding, tearing, or pulping.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–8002.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information Act/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should provide name and Social Security Number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained

in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information Act/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should provide name and Social Security Number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation, DoD 5400.11-R; 32 CFR part 324; or may be obtained from the Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.''

* * * * *

T7332c

SYSTEM NAME:

Bankruptcy Processing Files

SYSTEM LOCATION:

Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army, Air Force, Marine, and Navy military members, and Department of Defense civilian employees for whom bankruptcy notice has been received.

Employees of the Executive Office of the President for whom bankruptcy notice has been received.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security number (SSN), court notices, financial statements, certificates for deductions; agreements, military pay vouchers, correspondence between DFAS General Counsel and subordinate units, United States Attorneys, United States District Courts, and other Government agencies relevant to the proceeding.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 31 U.S.C. 3711, Collection and Compromise; 11 U.S.C. Chapter 5, Creditors and Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain such information pertaining to individuals who have filed for bankruptcy so that the Department of Defense may take appropriate action, either as an employer or a creditor, to protect its legal obligations and interests arising out of, or as a result of, the bankruptcy proceeding.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Executive and Judicial Branch entities to provide necessary and appropriate information for purposes related to, or in furtherance of, judicial or administrative proceedings involving an individual who has filed for bankruptcy.

The 'DoD Blanket Routine Uses' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to 'consumer reporting agencies' as defined in the Fair Credit Reporting Act, 15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3).

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Filed by individual's name and/or Social Security Number.

SAFEGUARDS:

Records are maintained in a controlled facility. Physical entry is restricted by the use of locks, guards, and is accessible only to authorized personnel. Access to records is limited to person(s) responsible for servicing the record in performance of their official duties and who are properly screened and cleared for need-to-know. Access to computerized data is restricted by passwords, which are changed periodically.

RETENTION AND DISPOSAL:

Temporary records are cut off at the end of the calendar year and retained from 180 days to 2 years after cut off. Permanent records are cutoff at the end of the calendar year and retained on site for 5 years and then retired to the appropriate Federal Records Center. Records are destroyed by degaussing, shredding, tearing, or pulping.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant General Counsel for Garnishment Operations, Defense Finance and Accounting Service—Cleveland, 1240 East Ninth Street, Cleveland, OH 44199–8002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information Act/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should provide name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Finance and Accounting Service, Freedom of Information Act/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

Individuals should provide name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Freedom of Information Act/Privacy Act Program Manager, Defense Finance and Accounting Service, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

RECORD SOURCE CATEGORIES:

From courts, Government records, and similar documents and sources relevant to the proceeding.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–4330 Filed 2–27–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Availability for the Final Program Environmental Impact Statement/ Environmental Impact Report for the San Diego Creek Watershed Special Area Management Plan/Watershed Streambed Alteration Agreement Process, Orange County, CA

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969 (as amended), the U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division (Corps), in coordination with the California Department of Fish and Game, Habitat Conservation Branch, South Coast Region (Department), has completed a Final Program Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) (Volume III—Evaluation of and Response to Comments/Errata) for the Special Area Management Plan/ Watershed Streambed Alteration Agreement (SAMP/WSAA) Process for the San Diego Creek Watershed, Orange County, California. The SAMP/WSAA Process establishes alternative permitting procedures for projects within the San Diego Creek Watershed that would alter the bed, bank, or channel of rivers, streams, and lakes and associated riparian habitats under the Department's jurisdiction, and discharge dredged or fill material into waters of the United States subject to the Corps jurisdiction. The SAMP/WSAA Process permitting procedures will improve the Corps and the Department's ability to evaluate such projects, as compared to the process each agency would normally follow in permitting such projects on a case-by-case basis.

The SAMP is comprised of the following four elements: an Analytical Framework that characterizes aquatic resource conditions for the San Diego Creek Watershed; modified watershed-specific permitting processes, including watershed-specific and resource-based permitting protocols and a mitigation framework; a Strategic Mitigation Plan that is based upon a riparian ecosystem restoration plan for the Watershed; and a Mitigation Coordination Program to achieve implementation of the Strategic Mitigation Plan and foster a coordinated approach to aquatic resource management in the San Diego Creek Watershed.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the Final Program EIS/EIR should be directed to Ms. Corice Farrar, SAMP Project Manager, Regulatory Division, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 532711, 915 Wilshire Boulevard, Los Angeles, CA 90053–2325, (213) 452–3296. Alternatively, comments can be submitted electronically to *Corice.J.Farrar@usace.army.mil*.

SUPPLEMENTARY INFORMATION: Bound copies of the Final Program EIS/EIR will be made available to the public for review at the following library reference desks: University of California at Irvine, Langson Library (Irvine, California); Newport Beach Central Library (Newport Beach, California); Heritage Park Regional Library (Irvine, California); and Santa Ana Public Library (Santa Ana, California). A CD copy of the document may be obtained by contacting Ms. Farrar in writing at the address or e-mail above. Interested parties are invited to provide their comments on the Final Program EIS/ EIR; such comments will to become a part of the official record and considered in the final decision. Written comments must be received on or before March 27, 2009 and should be submitted to the contact listed above. A Record of Decision (ROD) will be issued by the Corps no earlier than 30 days after this Notice of Availability. The Department intends prepare its findings, certify the Final Program EIS/EIR after the Corps issues its ROD, and issue a Notice of Determination. The 30-day NEPA review period and the CEQA 10-day waiting period shall run concurrently.

David J. Castanon,

Chief, Regulatory Division, U.S. Army Corps of Engineers, Los Angeles District.

[FR Doc. E9–4332 Filed 2–27–09; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by March 2, 2009.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: OMB Desk Officer, Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: February 24, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Postsecondary Education

Type of Review: New.

Title: Competitive Loan Auction Pilot Program.

Abstract: The Department of Education is requesting emergency clearance of all documents associated with this clearance by March 2, 2009 to meet Congressional legislative mandates. This data collection is necessary to conduct an auction for the rights to originate PLUS loans to parent borrowers under the Federal PLUS Program authorized by Section 428B of Title IV of the Higher Education Act of 1965, as amended (HEA), for the period beginning on or after July 1, 2009 and ending June 30, 2011. The HEA, as amended by the Higher Education Opportunity Act of 2008 (HEOA), requires that the right to originate PLUS loans to new parent borrowers under the Federal PLUS Program be determined through a competitive sealed bid, one-round auction to be conducted for each State, the District of Columbia, and Puerto Rico (State). The information requested is necessary to determine whether the winning bidders will be able to make and service the PLUS loans made to parents as a result of the auction as well as to conduct the auction itself.

Additional Information: The U.S. Department of Education requests that OMB grant an emergency clearance by March 2, 2009 for all documents associated with the Competitive Loan Auction Pilot Program for PLUS loans, so that Congressional legislative mandates may be satisfied. The Competitive Loan Auction Pilot Program for PLUS loans is a new Federal Family Education Loan program. This pilot program was mandated by Congress in the College Cost Reduction and Access Act of 2007 (CCRAA) and in the Higher Education Act (HEA) of 1965, as amended, Title IV, Part I, Section 499, Competitive Loan Auction Pilot Program. We are requesting permission for an emergency clearance to allow eligible lenders to participate in the prequalification process. We must meet the deadline set by Congress to have the pilot program in place and running by July 1, 2009, so that lenders may process student aid applications.

The Department will conduct The Competitive Loan Auction Pilot Program in two parts. First, lenders must submit a prequalification form that collects specific information necessary for the Department to determine if the lender has the financial and technological resources necessary to make loans to parents under the PLUS loan program in the state(s) in which the lender will bid. Secondly, once pre-qualified, lenders may submit a bid which is the lowest special allowance payment (SAP), as defined in Section 438 of the HEA, they are willing to accept for Federal PLUS Loans made pursuant to the auction. Only two eligible lenders (as defined in Section 435(d) of the HEA) meeting the pre-qualification requirements will be identified for each State and they will be the sole eligible lenders authorized to originate Federal PLUS loans to new parent borrowers. The Department must have clearance of the documents by March 2, 2009 so that the prequalification process can begin, the subsequent auction held, and winning bidders notified so they will have sufficient time to operationalize their business processes.

Frequency: Biennally.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 25.

Burden Hours: 18.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3966. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. E9–4333 Filed 2–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.031A]

Strengthening Institutions Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of intent to fund down the fiscal year (FY) 2008 grant slate for the Strengthening Institutions Program.

SUMMARY: The Secretary intends to use the grant slate developed in FY 2008 for the Strengthening Institutions Program authorized by Title III, Part A of the Higher Education Act of 1965, as amended (HEA), to make new grant awards in FY 2009. The Secretary takes this action because a significant number of high-quality applications remain on last year's grant slate. We expect to use an estimated $19,308,000 for new awards in FY 2009. The actual level of funding depends on final Congressional action.

FOR FURTHER INFORMATION CONTACT: Darlene B. Collins, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–6450. Telephone: (202) 502–7576 or via Internet: *darlene.collins@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On April 22, 2008, we published a notice in the **Federal Register** (73 FR 21614) inviting applications for new awards under the Strengthening Institutions Program.

In response to this notice, we received a significant number of high-quality applications for grants under the Strengthening Institutions Program and made 61 new grant awards. However, many applications that were awarded high scores by peer reviewers did not receive funding in FY 2008.

Limited funding may be available for new awards under this program in FY 2009. To conserve funding that would have been required for a peer review of new grant applications and to instead use those funds to support grant activities, we will select grantees in FY 2009 from the existing slate of applicants. This slate was developed during the FY 2008 competition using

the selection criteria, application requirements, and definitions referenced in the **Federal Register** notice.

Note: To be eligible to receive a grant under the process outlined in this notice all Individual Development grant applicants that received a peer review score of 89.33 or above during the FY 2008 Title III, Part A Strengthening Institutions Program competition and that did not receive funding in the FY 2008 competition for the Strengthening Institutions Program MUST apply for designation as an eligible institution for the programs authorized by Title III and Title V of the HEA. The notice inviting applications for designation as an eligible institution under the Title III and Title V programs was published in the **Federal Register** on January 21, 2009 (74 FR 3579). For those applicant institutions seeking eligibility to apply for funds under the Title III and Title V programs, the deadline for applications was February 20, 2009.

Program Authority: 20 U.S.C. 1057–1059d.

Electronic Access to This Document

You may 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*.

Delegation of Authority: The Secretary of Education has delegated authority to Daniel T. Madzelan, Director, Forecasting and Policy Analysis for the Office of Postsecondary Education to perform the functions of the Assistant Secretary for Postsecondary Education.

Dated: February 25, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–4360 Filed 2–27–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Fiscal Year (FY) 2010–2011 Proposed Power and Transmission Rate Adjustments; Public Hearing and Opportunities for Public Review and Comment; Correction

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of FY 2010–2011 Proposed Power and Transmission Rate Adjustments; Correction.

SUMMARY: On February 10, 2009, BPA published a notice in the **Federal Register** (74 FR 6609), (February 10, 2009 Notice) announcing its upcoming consolidated rate proceeding, BPA–10, with separate sub-dockets for power and transmission rates for FY 2010–2011. However, on page 6611, third column in Part III.A., Distinguishing Between ''Participants'' and ''Parties,'' of the February 10, 2009 Notice, BPA made a misstatement that it now wishes to correct. The fifth sentence in this section, which stated ''BPA customers whose rates are subject to this proceeding, or their affiliated customer groups, may not submit participant comments.'', is hereby deleted in its entirety and replaced with the following sentence ''Any entity that has intervened in this proceeding may not submit participant comments.''

Part III.A., on page 6611, third column is corrected to read as follows:

Part III—Public Participation

A. Distinguishing Between ''Participants'' and ''Parties''

BPA distinguishes between ''participants in'' and ''parties to'' the hearings. Apart from the formal hearing process, BPA will receive written comments, views, opinions, and information from ''participants,'' who are defined in BPA's Procedures as persons who may submit comments without being subject to the duties of, or having the privileges of, parties. Participants' written comments will be made part of the official record and considered by the Administrator. Participants are not entitled to participate in the prehearing conference; may not cross-examine parties' witnesses, seek discovery, or serve or be served with documents; and are not subject to the same procedural requirements as parties. Any entity that has intervened in this proceeding may not submit participant comments. Members or employees of entities that have intervened in the rate proceeding may submit general comments as participants but may not use the comment procedures to address specific issues raised by their intervenor organization or others.

Written comments by participants will be included in the record if they are received by April 24, 2009. Written views, supporting information, questions, and arguments should be submitted to the address listed in the **ADDRESSES** section of this Notice.

Entities or persons become parties to the proceeding by filing petitions to intervene, which must state the name and address of the entity or person requesting party status and their interest in the hearing. BPA customers and affiliated customer groups will be granted intervention based on a petition filed in conformance with BPA's Procedures. Other petitioners must explain their interests in sufficient detail to permit the hearing officer to determine whether such petitioners have a relevant interest in the hearing. Pursuant to Rule 1010.1(d) of BPA's Procedures, BPA waives the requirement in Rule 1010.4(d) that an opposition to an intervention petition be filed and served 24 hours before the prehearing conference. Any opposition to an intervention petition must instead be made at the prehearing conference. Any party, including BPA, may oppose a petition for intervention. All timely petitions will be ruled on by the hearing officer. Late interventions are strongly disfavored. Opposition to an untimely petition to intervene must be filed and received by BPA within two days after service of the petition.

FOR FURTHER INFORMATION CONTACT: Ms. Heidi Helwig—DKE–7, Public Affairs Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621; by phone at 503–230–3488 or toll free at 1–800–622–4519; or via e-mail to *hyhelwig@bpa.gov.*

Responsible Official: Mr. Raymond D. Bliven, Power Rates Manager, is the official responsible for the development of BPA's power rates, and Mr. Edison Elizeh, Commercial Business Assessment Manager, is the official responsible for the development of BPA's transmission and ancillary services rates.

BPA Attorney Advisors: Mr. Peter J. Burger is the principal BPA attorney assigned to the power rates sub-docket proceeding, and Mr. Barry Bennett is the principal BPA attorney assigned to the transmission and ancillary services rates sub-docket proceeding. Mr. Burger may be contacted as follows: by U.S. Mail at Mr. Peter J. Burger, Office of General

Counsel, LP–7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621; via e-mail at *pjburger@bpa.gov;* or by telephone at 503–230–4148. Mr. Bennett may be contacted as follows: by U.S. Mail at Mr. Barry Bennett, Office of General Counsel, LC–7, Bonneville Power Administration, P.O. Box 3621, Portland, OR 97208–3621; via e-mail at *bbennett@bpa.gov;* or by telephone at 503–230–4053.

Issued this 20 day of February, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–4323 Filed 2–27–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Lyle Falls Fish Passage Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to implement the Proposed Action identified in the Lyle Falls Fish Passage Project EIS (DOE/EIS–0397, November 2008). BPA has decided to fund modifications to the existing Lyle Falls Fishway on the lower Klickitat River (river mile 2.2) in Klickitat County, Washington to improve fish passage to the upper part of the Klickitat River watershed. In addition to improving fish passage, the modifications will facilitate collection and monitoring of biological information for future fishery management and enhance opportunities for adult salmonids to access and use habitat in the upper Klickitat River. The EIS was cooperatively prepared by BPA, the Confederated Tribes and Bands of the Yakama Nation (Yakama Nation), the U.S. Forest Service (USFS), and the Washington Department of Fish and Wildlife (WDFW).

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *http://www.efw.bpa.gov/environmental_services/Document_Library/Lyle_Falls/*.

FOR FURTHER INFORMATION, CONTACT: Mr. Carl J. Keller, Environmental Project Manager, Bonneville Power Administration KEC–4, P.O.Box 3621, Portland, Oregon 97208–3621; telephone number 1–503–230–7692; fax number 503–230–5699; or e-mail *cjkeller@bpa.gov*.

SUPPLEMENTARY INFORMATION: The lower 10.8 miles of the Klickitat River are designated as a recreational river segment under the National Wild and Scenic Rivers Act. The USFS administers this portion of the Klickitat River and its corridor. The fishway at Lyle Falls is owned by WDFW and operated by the Yakama Nation. The existing fishway does not function effectively, particularly during low flows, and does not comply with fish passage standards established by the National Marine Fisheries Service and WDFW. The improvements will facilitate migration for spring and fall Chinook salmon, coho salmon, steelhead trout, Pacific lamprey, and bull trout, but the primary benefits will be to fall Chinook and coho salmon.

In addition to increasing fish production in the Klickitat River, the project will contribute to an increase in fish production in the Columbia River Basin. The project will also help BPA fulfill its Federal Columbia River Power System off-site mitigation responsibilities under the Pacific Northwest Electric Power Planning and Conservation Act, and its responsibilities under the Endangered Species Act.

Issued in Portland, Oregon, on February 20, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–4324 Filed 2–27–09; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8778–2]

EPA Science Advisory Board Staff Office; Request for Nominations of Experts To Augment the Science Advisory Board Exposure and Human Health Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The SAB Staff Office is requesting the nomination of experts to augment the Science Advisory Board (SAB) Exposure and Human Health Committee (EHHC) to review updated values for EPA's Integrated Risk Information System (IRIS).

DATES: Nominations should be submitted by March 23, 2009 per instructions below.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information regarding this Request for Nominations may contact Dr. Sue Shallal, Designated Federal Officer (DFO), SAB Staff Office, by telephone/voice mail at (202) 343–9977; by fax at (202) 233–0643; or via e-mail at *shallal.suhair@epa.gov*. General information concerning the EPA Science Advisory Board can be found on the EPA SAB Web site at *http://www.epa.gov/sab*.

SUPPLEMENTARY INFORMATION:

Background: EPA's Office of Research and Development has initiated a process for updating the values currently found in the Integrated Risk Information System (IRIS) database. The intent of the IRIS Update Project is to review all dose-response assessment values (oral reference doses [RfDs], inhalation reference concentrations [RfCs], cancer slope factors, and inhalation unit risks) in IRIS that have a posting date more than 10-years old. Further information on the IRIS Update process can be found at the following URL: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=204063*. ORD has requested that the Science Advisory Board (SAB) conduct a pilot review of draft assessments for several chemicals.

The SAB was established by 42 U.S.C. 4365 to provide independent scientific and technical advice, consultation and recommendations to the EPA Administrator on the technical basis for Agency positions and regulations. In response to ORD's request, the SAB Staff Office will augment the SAB Exposure and Human Health Committee (EHHC) with additional experts to review EPA's draft assessments of several IRIS chemicals. The augmented EHHC will comply with the provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies. Upon completion, the panel's report will be submitted to the chartered SAB for final approval for transmittal to the EPA Administrator. The augmented EHHC is being asked to comment on the scientific soundness of nine draft assessments.

Availability of the Review Materials: The EPA draft assessments to be reviewed by the augmented EHHC will be made available by the Office of Research and Development at the following URL: *http://cfpub.epa.gov/ncea/cfm/recordisplay.cfm?deid=204063*. For questions and information concerning the review materials, please contact Dr. Chon Shoaf, at (919) 541–4155, or *shoaf.chon@epa.gov*.

Request for Nominations: The SAB Staff Office is requesting nominations of nationally recognized experts with

expertise in one or more of the following areas: chemical toxicology and risk assessment, including reproductive/developmental toxicology, neurotoxicity and carcinogenicity; and dose-response assessment.

Process and Deadline for Submitting Nominations: Any interested person or organization may nominate qualified individuals for possible service on the augmented EHHC in the areas of expertise described above. Nominations should be submitted in electronic format (which is preferred over hard copy) following the instructions for ''Nominating Experts to Advisory Panels and Ad Hoc Committees Being Formed'' provided on the SAB Web site. The form can be accessed through the ''Nomination of Experts'' link on the blue navigational bar on the SAB Web site at *http://www.epa.gov/sab*. To receive full consideration, nominations should include all of the information requested.

EPA's SAB Staff Office requests contact information about: The person making the nomination; contact information about the nominee; the disciplinary and specific areas of expertise of the nominee; the nominee's curriculum vita; sources of recent grant and/or contract support; and a biographical sketch of the nominee indicating current position, educational background, research activities, and recent service on other national advisory committees or national professional organizations.

Persons having questions about the nomination procedures, or who are unable to submit nominations through the SAB Web site, should contact Dr. Sue Shallal, DFO, as indicated above in this notice. Nominations should be submitted in time to arrive no later than March 23, 2009.

The EPA SAB Staff Office will acknowledge receipt of nominations. The names and biosketches of qualified nominees identified by respondents to the **Federal Register** notice and additional experts identified by the SAB Staff will be posted on the SAB Web site at *http://www.epa.gov/sab*. Public comments on this ''Short List'' of candidates will be accepted for 21 calendar days. The public will be requested to provide relevant information or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates.

For the EPA SAB Staff Office, a balanced subcommittee or review panel includes candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. In establishing the augmented EHHC, the SAB Staff Office will consider public comments on the ''Short List'' of candidates, information provided by the candidates themselves, and background information independently gathered by the SAB Staff Office. Selection criteria to be used for Panel membership include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) availability and willingness to serve; (c) absence of financial conflicts of interest; (d) absence of an appearance of a lack of impartiality; and (e) skills working in committees, subcommittees and advisory panels; and, for the Panel as a whole, (f) diversity of, and balance among, scientific expertise, viewpoints, etc.

The SAB Staff Office's evaluation of an absence of financial conflicts of interest will include a review of the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48). This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities (which includes membership on an EPA Federal advisory committee) and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf*.

The approved policy under which the EPA SAB Office selects subcommittees and review panels is described in the following document: *Overview of the Panel Formation Process at the Environmental Protection Agency Science Advisory Board* (EPA–SAB–EC–02–010), which is posted on the SAB Web site at *http://www.epa.gov/sab/pdf/ec02010.pdf*.

Dated: February 23, 2009.

Anthony F. Maciorowski,

Deputy Director, EPA Science Advisory Board Staff Office.

[FR Doc. E9–4348 Filed 2–27–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to OMB for Review and Approval, Comments Requested

February 24, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden, invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before April 1, 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 contacts listed below as soon as possible.

ADDRESSES: Direct all PRA comments 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*. To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://www.reginfo.gov/public/do/PRAMain*, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal

Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.''

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0027.

Title: Application for Construction Permit for a Commercial Broadcast Station.

Form Number: FCC Form 301.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 4,453 respondents; 7,889.

Estimated Time per Response: 3–6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 19,291 hours.

Total Annual Costs: $54,441,352.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the *Order*, the following changes are made to Form 301: The instructions to Form 301 have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new question asking applicants to indicate whether the applicant is claiming ''eligible entity'' status. The instructions have been revised to assist applicants with completing the new question.

OMB Control Number: 3060–0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 314; Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 315; Section 73.3580, Local Public Notice of Filing of Broadcast Applications.

Form Number: FCC Forms 314 and 315.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 4,820 respondents; 12,520 responses.

Estimated Time per Response: 0,084–6 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 17,933 hours.

Total Annual Costs: $36,066,450.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i), 303 and 308 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. The Order adopts rule changes designed to expand opportunities for participation in the broadcasting industry by new entrants and small businesses, including minority- and women-owned businesses. Consistent with actions taken by the Commission in the Order, the following changes are made to Forms 314 and 315: The instructions to Form 314 have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new certification concerning compliance with the Commission's anti-discrimination rules. Section III of the form includes a new question asking applicants to indicate whether the applicant is claiming ''eligible entity'' status. Section III also contains a new question asking applicants to indicate whether the proposed transaction involves the assignment of a radio station license that is part of a non-compliant, grandfathered cluster of radio licenses, and whether any licenses will be divested within 12 months of consummation of the transaction and assigned to an eligible entity. The instructions for Sections II and III have been revised to assist applicants with completing the new questions.

The instructions to Form 315 have been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable. Section II of the form includes a new certification concerning compliance with the Commission's anti-discrimination rules. Section IV of the form includes a new question asking applicants to indicate whether the applicant is claiming ''eligible entity'' status. Section IV also contains a new question asking applicants to indicate whether the proposed transaction involves the assignment of a radio station license that is part of a non-compliant, grandfathered cluster of radio licenses, and whether any licenses will be divested within 12 months of consummation of the transaction and assigned to an eligible entity. The instructions for Sections II and IV have been revised to assist applicants with completing the new questions.

OMB Control Number: 3060–0075.

Title: Application for Transfer of Control of a Corporate Licensee or Permittee, or Assignment of License or Permit for an FM or TV Translator Station, or a Low Power Television Station—FCC Form 345.

Form Number: FCC Form 345.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for profit entities; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents/Responses: 1,000 respondents; 2,000 responses.

Estimated Time per Response: 5 minutes to 1.25 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure requirement.

Total Annual Burden: 1,792 hours.

Total Annual Costs: $1,598,625.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this information collection is contained in 154(i) and 310 of the Communications Act of 1934, as amended.

Nature and Extent of Confidentiality: There is no need for confidentiality with this information collection.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On December 18, 2007, the Commission adopted a *Report and Order and Third Further Notice of Proposed Rulemaking* (the ''Order'') in MB Docket Nos. 07–294; 06–121; 02–277; 04–228, MM Docket Nos. 01–235; 01–317; 00–244; FCC 07–217. Consistent with actions taken by the Commission in the Order, the following changes are made to Form 345: Section II of Form 345 includes a new certification concerning compliance with the Commission's anti-discrimination rules and the instructions for Section II have been revised to assist applicants with completing the new question. The instructions in Section III have also been revised to incorporate a definition of ''eligible entity,'' which will apply to the Commission's existing Equity Debt Plus (''EDP'') standard, one of the standards used to determine whether interests are attributable.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9–4335 Filed 2–27–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

February 24, 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 May 1, 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: You may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to *PRA@fcc.gov*. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1–C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418–2918 or send an e-mail to *PRA@fcc.gov*.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0922.

Type of Review: Extension of a currently approved collection.

Title: Broadcast Mid-Term Report, FCC Form 397.

Form Number: FCC Form 397.

Respondents: Business or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 538 respondents; 538 responses.

Estimated Time per Response: 0.5 hours.

Frequency of Response: Mid-point reporting requirement.

Total Annual Burden: 269 hours.

Nature of Response: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Sections 154(i) and 303 of the Communications Act of 1934, as amended.

Confidentiality: No need for confidentiality required with this collection of information.

Total Annual Cost: None.

Privacy Impact Assessment(s): No impact(s).

Needs and Uses: The Broadcast Mid-Term Report (FCC Form 397) is required to be filed by each broadcast television station that is part of an employment unit with five or more full-time employees and each broadcast radio station that is part of an employment unit with more than ten full-time employees. It is a data collection device used to assess broadcast compliance with EEO outreach requirements in the middle of license terms that are eight years in duration.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–4337 Filed 2–27–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–09–0729]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed project or to obtain a copy of data collection plans and instruments, call the CDC Reports Clearance Officer on 404–639–5960 or send comments to CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS D–74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov*.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Customer Surveys Generic Clearance for the National Center for Health Statistics (0920–0729)—Extension—

National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Section 306 of the Public Health Service (PHS) Act (42 U.S.C. 242k), as amended, authorizes that the Secretary of Health and Human Services (DHHS), acting through NCHS, shall collect statistics on ''the extent and nature of illness and disability of the population of the United States.'' This is a request for a generic approval from OMB to conduct customer surveys over the next three years.

As part of a comprehensive program, the National Center for Health Statistics (NCHS) plans to continue to assess its customers' satisfaction with the quality and relevance of the information it produces. NCHS will conduct voluntary customer surveys to assess strengths in agency products and services and to evaluate how well it addresses the emerging needs of its data users. Results of these surveys will be used in future planning initiatives.

The data will be collected using a combination of methodologies appropriate to each survey. These may include: evaluation forms, mail surveys, focus groups, automated and electronic technology (*e.g.*, e-mail, Web-based surveys), and telephone surveys. Systematic surveys of several groups will be folded into the program. Among these are Federal customers and policy makers, state and local officials who rely on NCHS data, the broader educational, research, and public health community, and other data users. Respondents may include data users who register for and/or attend NCHS sponsored conferences; persons who access the NCHS Web site and the detailed data available through it; consultants; and others. Respondent data items may include (in broad categories) information regarding respondent's gender, age, occupation, affiliation, location, etc., to be used to characterize responses only. Other questions will attempt to obtain information that will characterize the respondents' familiarity with and use of NCHS data, their assessment of data content and usefulness, general satisfaction with available services and products, and suggestions for improvement of services and products.

The resulting information will be for NCHS internal use. There is no cost to respondents other than their time to participate in the survey.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of survey	Respondents	Number of respondents	Number of responses/respondent	Average burden/response (in hours)	Total burden hours
Questionnaire for conference registrants/attendees.	Public/private researchers, Consultants, and others.	1,000	1	10 / 60	167
Focus groups	Public/private researchers, Consultants, and others.	80	1	1	80
Web-based	Public/private researchers, Consultants, and others.	1,200	1	10 / 60	200
Other customer surveys	Public/private researchers, Consultants, and others.	400	1	15 / 60	100
Total		2,680			547

Dated: February 24, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–4314 Filed 2–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Board of Scientific Counselors, National Institute for Occupational Safety and Health, Department of Health and Human Services, has been renewed for a 2-year period through February 3, 2011.

For information, contact Roger Rosa, Ph.D., Executive Secretary, Board of Scientific Counselors, National Institute for Occupational Safety and Health, Department of Health and Human Services, 200 Independence Avenue, SW., Room 715H, Mailstop P12, Washington, DC 20201, telephone 202/205–7856 or fax 202/260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–4322 Filed 2–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Healthcare Infection Control Practices Advisory Committee: Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Healthcare Infection Control Practices Advisory Committee, Department of Health and Human Services, has been renewed for a 2-year period through January 19, 2011.

For information, contact Michael Bell, M.D., Executive Secretary, Healthcare Infection Control Practices Advisory Committee, Department of Health and Human Services, 1600 Clifton Road, NE., Mailstop A07, Atlanta, Georgia 30333, telephone 404/639–6490 or fax 404/639–4043.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee

management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: February 3, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–4313 Filed 2–27–09; 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) announces the following meeting of the aforementioned committee:

Time and Date: 9 a.m.–9:30 a.m., March 19, 2009 (Open). 9:30 a.m.–6 p.m., March 19, 2009 (Closed).

Place: Embassy Suites of Buckhead, 3285 Peachtree Road, Atlanta, GA 30305, telephone: (404) 261–7733.

Status: Portions of the meetings 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 individual research grant applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: RFA–CE–09–005, ''Research Priorities in Acute Injury Care (R01)''.

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., Mailstop F–62, Atlanta, Georgia 30341, telephone: (770) 488–4281; fax (770) 488–4422.

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: February 19, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–4316 Filed 2–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Public Meeting

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting: ''Partnerships to Advance the National Occupational Research Agenda (NORA).''

Public Meeting Time and Date: 10 a.m.–4 p.m. EDT, June 17, 2009.

Place: Patriots Plaza, 395 E Street, SW., Conference Room 9000, Washington, DC 20201.

Purpose of Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include updates from NIOSH leadership on NORA as well as updates from approximately half of the Sector Councils on their progress, priorities, and implementation plans to date, including the Construction Sector; Manufacturing Sector; Services Sector; Public Safety Sub-Sector; and Wholesale and Retail Trade Sector. Updates will also be given on cross-council coordination activities in the areas of surveillance and safety culture. After each update, there will be time to discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and conference room facilities. There is limited space available in the meeting room (capacity 34). Therefore, information to allow participation in the meeting through the internet (to see the slides) and a teleconference call (capacity 50) will be provided to registered participants. Participants are encouraged to consider attending by this method. Each participant is requested to register for the free meeting by sending an e-mail to *noracoordinator@cdc.gov* containing the participant's name, organization name, contact telephone number on the day of the meeting, and preference for participation by web meeting (requirements include: computer, internet connection, and telephone, preferably with ''mute'' capability) or in person. An e-mail confirming registration will include the details needed to participate in the web meeting. Non-US citizens are encouraged to participate in the web meeting. Non-US citizens registering to attend in person after June 3 will not have time to comply with security procedures.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html.*

Since 2006, NORA has been structured according to industrial sectors. Eight sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the web and town hall meetings, NORA Sector Councils have been working to define sector-specific strategic plans for conducting research and moving the results into widespread practice. During 2008–09, most of these Councils have posted draft strategic plans for public comment. Two have posted finalized National Sector

Agendas after considering comments on the drafts. For more information, see the link above and choose ''Sector-based Approach,'' ''NORA Sector Councils,'' ''Sector Agendas'' and ''Comment on Draft Sector Agendas'' from the right-side menu.

Contact Person for Technical Information: Sidney C. Soderholm, PhD, NORA Coordinator, e-mail *noracoordinator@cdc.gov,* telephone (202) 245–0665.

Dated: February 18, 2009.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–4318 Filed 2–27–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0092]

Agency Information Collection Activities; Proposed Collection; Comment Request; Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the collection of information concerning class II special controls for automated blood cell separator device operating by centrifugal or filtration separation principle.

DATES: Submit written or electronic comments on the collection of information by May 1, 2009.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle (OMB Control Number 0910–0594)—Extension

Under the Safe Medical Devices Act of 1990 (Public Law 101–629, 104 Stat. 4511), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device. The special control guidance serves to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components as well as the special control for the automated blood cell separator device operating on a filtration separation principle intended for the routine collection of blood and blood components reclassified as class II (§ 864.9245 (21 CFR 864.9245)).

For currently marketed products not approved under the premarket approval process, the manufacturer should file with FDA for 3 consecutive years an annual report on the anniversary date of the device reclassification from class III to class II or, on the anniversary date of the section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the act should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated cell separator device intended for the routine collection of blood and blood components, should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated adverse events that have occurred and that are not required to be reported by manufacturers under Medical Device Reporting (MDR) (part 803 (21 CFR part 803)). The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components relieves manufacturers of the burden of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval under part 814, subpart E (21 CFR part 814, subpart E), including

the submission of periodic reports under § 814.84.

Collecting or transfusing facilities and manufacturers have certain responsibilities under the Federal regulations. For example, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (21 CFR 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event (§ 803.50(b)). In addition, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§ 803.50).

In the special control guidance document, FDA recommends that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility or similar reports of adverse events collected in addition to those required under the MDR regulation. The MedWatch medical device reporting code instructions (*http://www.fda.gov/cdrh/mdr/373.html*) contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Reporting Activity	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Annual Report	4	1	4	5	20

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately four manufactures of automated blood cell separator devices. We estimate that the manufacturers will spend approximately 5 hours preparing and submitting the annual report.

Other burden hours required for § 864.9245 are reported and approved under OMB control number 0910–0120 (premarket notification submission 501(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR).

Dated: February 20, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–4315 Filed 2–27–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Part C Early Intervention Services Grant

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of non-competitive program expansion supplemental award.

SUMMARY: The Health Resources and Services Administration (HRSA) will be providing temporary critical HIV medical care and treatment services through the Greenwood Leflore Hospital (GLH) Magnolia Medical Clinic to avoid a disruption of HIV clinical care to clients in Bolivar, Sunflower and Washington Counties in Mississippi.

SUPPLEMENTARY INFORMATION: Intended recipient of the award: GLH Magnolia Medical Clinic, Greenwood, Mississippi.

Amount of the Award: $73,125 to ensure ongoing clinical services to the target population.

Authority: Section 2651 of the Public Health Service Act, 42 U.S.C. 300ff–51.

CFDA Number: 93.918.

Period of Support: The period of supplemental support is from April 1, 2009 to June 30, 2009.

Justification for the Exception to Competition:

Critical funding for HIV medical care and treatment services to clients in Bolivar, Sunflower and Washington Counties in Mississippi will be continued through a non-competitive program expansion supplement to an existing grant award to the GLH Magnolia Medical Clinic in Greenwood, Mississippi. This is a temporary award because the previous grant recipient serving this population notified HRSA that it would not continue in the program. GLH Magnolia Medical clinic is the best qualified grantee for this supplement since it serves many of the former grantee's patients and is the closest Part C Ryan White HIV/AIDS Program to the former grantee. Further funding beyond June 30, 2009 for this service area will be competitively awarded during the next Part C HIV Early Intervention Service competing application process for FY 2009.

FOR FURTHER INFORMATION CONTACT: Kathleen Treat, via email *ktreat@hrsa.gov*, or via telephone, 301–443–0493.

Dated: February 22, 2009.

Elizabeth M. Duke,

Administrator.

[FR Doc. E9–4277 Filed 2–27–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2008–0333]

Delaware River and Bay Oil Spill Advisory Committee; Meeting

AGENCY: Coast Guard, DHS.

ACTION: Notice of meeting.

SUMMARY: The Delaware River and Bay Oil Spill Advisory Committee (DRBOSAC) will meet in Philadelphia, PA to discuss various issues to improve oil spill prevention and response strategies for the Delaware River and Bay. This meeting will be open to the public.

DATES: The Committee will meet on Wednesday, March 18, 2009, from 10 a.m. to 1 p.m. Written material and requests to make oral presentations should reach the Coast Guard on or before March 11, 2009. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before March 11, 2009.

ADDRESSES: The Committee will meet at Coast Guard Sector Delaware Bay, 1 Washington Ave., Philadelphia, PA 19147. Send written material and requests to make oral presentations to Gerald Conrad, liaison to the Designated Federal Officer (DFO) of the DRBOSAC, at the address above. This notice and

any documents identified in the Supplementary Information section as being available in the docket may be viewed online, at *http://www.regulations.gov*, using docket number USCG–2008–0333.

FOR FURTHER INFORMATION CONTACT: Gerald Conrad, liaison to the DFO of the DRBOSAC, telephone 215–271–4824.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463).

Agenda of the Meeting

The agenda for the meeting will be as follows:

(1) Opening comments.

(2) Introductions.

(3) Administrative announcements.

(4) Debriefs from each DRBOSAC Subcommittee.

(5) Future Committee business.

(6) Closing.

More information and detail on the meeting will be available at the committee Web site, located at *http://www.uscg.mil/d5/sectDelawarebay/DRBOSAC.asp*. Additional detail may be added to the agenda up to March 11, 2009.

Procedural

This meeting will be open to the public. All persons entering the building will have to present identification and may be subject to screening. Please note that the meeting may close early if all business is finished.

The public will be able to make oral presentations during the meeting when given the opportunity to do so. The public may file written statements with the committee; written material should reach the Coast Guard no later than March 11, 2009. If you would like a copy of your material distributed to each member of the committee in advance of the meeting, please submit 35 copies to the liaison to the DFO no later than March 11, 2009.

Please register your attendance with the liaison to the DFO no later than March 11, 2009.

Information on Services for Individuals With Disabilities

For information on facilities, or services for individuals with disabilities, or to request special assistance at the meeting, contact the Liaison to the DFO as soon as possible.

Dated: February 22, 2009.

David L. Scott,

Captain, U.S. Coast Guard, Commander, Sector Delaware Bay, Designated Federal Officer.

[FR Doc. E9–4351 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

United States Immigration and Customs Enforcement

Agency Information Collection Activities: Extension of an Existing Information Collection; Comment Request

ACTION: 30-Day Notice of Information Collection Under Review; Form G–79A, Information Relating to Beneficiary of Private Bill; OMB Control No. 1653–0026.

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (USICE), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on December 4, 2008 Vol. 73 No. 234 73951, allowing for a 60 day public comment period. No comments were received on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for thirty days April 1, 2009.

Written comments and suggestions from the public and affected agencies regarding items contained in this notice and especially with regard to the estimated public burden and associated response time should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to OMB Desk Officer, for United States Immigration and Customs Enforcement, Department of Homeland Security, and sent via electronic mail to *oira_submission@omb.eop.gov* or faxed to (202) 395–6974.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Information Relating to Beneficiary of Private Bill.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form G–79A. U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected on the Form G–79A is necessary for U.S. Immigration and Customs Enforcement (ICE) to provide reports to Congress on Private Bills when requested.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

Requests for a copy of the proposed information collection instrument, with instructions; or inquiries for additional information should be directed to: Joseph M. Gerhart, Chief, Records Management Branch; U.S. Immigration and Customs Enforcement, 500 12th Street, SW., Room 3138, Washington, DC 20536; (202) 732–6337.

Dated: February 24, 2009.

Joseph M. Gerhart,

Chief, Records Management Branch, U.S. Immigration and Customs Enforcement, Department of Homeland Security.

[FR Doc. E9–4294 Filed 2–27–09; 8:45 am]

BILLING CODE 9111–28–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5275–N–02]

Native American Housing Assistance and Self-Determination Reauthorization Act of 2008: Request for Nominations for Negotiated Rulemaking Committee Membership

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: On January 12, 2009, HUD published a **Federal Register** notice announcing the initiation of negotiated rulemaking for the purpose of developing regulatory changes to the programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Changes to these programs were made by the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, which also directs that HUD undertake negotiated rulemaking to implement the statutory revisions. This notice explains how persons may be nominated for membership on the negotiated rulemaking committee.

DATES: Nominations for committee membership are due on or before: May 1, 2009.

ADDRESSES: Interested persons are invited to submit nominations for membership on the negotiated rulemaking committee. There are two methods for nominations to be included in the docket for this rule. Additionally, all submissions must refer to the above docket number and title.

1. *Submission of Nominations by Mail.* Nominations may be submitted by mail to the Regulations Division, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Nominations.* Interested persons may submit nominations electronically through the Federal eRulemaking Portal at *http://www.regulations.gov*. HUD strongly encourages the electronic submission of nominations. Electronic submission allows the maximum time to prepare and submit a nomination, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Nominations submitted electronically through the *http://www.regulations.gov* Web site can be viewed by interested members of the public. Individuals should follow the instructions provided on that site to submit nominations electronically.

Note: To receive consideration, nominations must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. No facsimile nominations. Facsimile (FAX) nominations are not acceptable.

Public Inspection of Nominations. All properly submitted nominations and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the submissions must be scheduled by calling the Regulations Division at (202) 708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Copies of all submissions are available for inspection and downloading at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4126,Washington, DC 20410–5000, telephone: 202–401–7914 (this is not a toll-free number). Persons with hearing or speech impediments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. In addition, title VI of NAHASDA authorizes federal guarantees for financing of certain tribal activities (Title VI Loan Guarantee Program). The regulations governing the IHBG and Title VI Loan Guarantee Programs are located in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1996 (5 U.S.C. 561–570).

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (2008 Reauthorization Act) reauthorizes NAHASDA through 2013 and makes a number of amendments to the statutory requirements governing the IHBG and Title VI Loan Guarantee Programs. The 2008 Reauthorization Act amends section 106 of NAHASDA to provide that HUD shall ''initiate a negotiated rulemaking in accordance with this section by not later than 90 days after enactment of the'' 2008 Reauthorization Act.

On March 29, 2006 (71 FR 16004), HUD published a notice in the **Federal Register** announcing the proposed membership of a negotiated rulemaking committee to provide recommendations on regulatory changes effectuating certain statutory amendments to NAHASDA. However, the establishment of that negotiated rulemaking committee was never made final. Given the time that has passed and the more comprehensive changes made by the 2008 Reauthorization Act, HUD has determined it appropriate to form a new negotiated rulemaking committee for the purposes of implementing the 2008 Reauthorization Act. In addition, the new negotiated rulemaking committee may consider the other statutory amendments to NAHASDA that were to be addressed by the earlier committee. (Proposed membership on the earlier negotiated rulemaking committee announced in HUD's March 29, 2006, notice does not preclude the individual from membership on the new committee.)

On January 12, 2009 (74 FR 1227), HUD published a notice in the **Federal Register** announcing the initiation of the negotiated rulemaking required by the 2008 Reauthorization Act. The January 12, 2009, notice provides additional information on the IHBG programs and the negotiated rulemaking process.

II. This Notice

This notice is the next step in the process of establishing the negotiated rulemaking committee required by the 2008 Reauthorization Act. Specifically, the notice solicits nominations for membership on the negotiated rulemaking committee and explains how persons may be nominated for committee membership. The committee will consist of representatives of the various interests that are potentially affected by the rulemaking. Members may include tribally designated housing entities, elected officials of tribal governments, and HUD representatives. Members will serve at HUD's discretion.

The Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570) provides, at 5 U.S.C. 565(b), that the membership of a negotiated rulemaking committee should generally be limited to 25 members. It is not required that each potentially affected organization or entity necessarily have its own representative. However, HUD must be satisfied that the group as a whole reflects a geographically diverse cross-section of small, medium, and large Indian tribes.

III. Requests for Representation

If you are interested in serving as a member of the Committee or in nominating another person to serve as a member of the Committee, you may submit a nomination to HUD in accordance with the **ADDRESSES** section of this notice. Your nomination for membership on the Committee must include:

1. The name of your nominee and a description of the interests the nominee would represent;
2. Evidence that your nominee is authorized to represent a tribal government, which may include the tribally designed housing entity of a tribe with the interests the nominee would represent, so long as the tribe provides evidence that it authorizes such representation; and
3. A written commitment that the nominee will actively participate in good faith in the development of the rule.

HUD will determine whether a proposed member will be included in the makeup of the Committee. HUD will make that decision based on whether a proposed member would be significantly affected by the proposed rule, whether the interest of the proposed member could be represented adequately by other members, and whether space permits.

IV. Additional Notice

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide a list of the proposed committee membership, provide certain other information regarding the formation of the committee, and solicit nominations for selection to the committee. After reviewing any comments on this notice and any requests for representation, HUD will publish a notice that will announce the proposed membership of the committee, solicit additional nominations for membership, and provide the information required by section 564 in the **Federal Register**.

Dated: February 23, 2009.

Paula O. Blunt,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. E9–4274 Filed 2–27–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2008–N0317]; [20124–1112–0000–F2]

Town of Marana Habitat Conservation Plan, Pima County, AZ

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability: draft environmental impact statement and draft habitat conservation plan in support of an incidental take permit application.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from the Town of Marana (Applicant) for an incidental take permit (ITP) under the Endangered Species Act of 1973 (Act). The Applicant has been assigned permit number TE–204887–0. If approved, the permit would be for a period of 25 years, and would authorize incidental take of two species currently listed under the Act, and 11 species that may become listed under the Act in the future (collectively ''covered species''). The proposed incidental take would occur in Pima County, Arizona, as a result of impacts on covered species and occupied habitat from specified actions conducted under the authority of the Town of Marana. We request public comments on the application and associated documents, and announce our plan to hold public meetings.

DATES: *Public meetings:* We will accept oral and written comments at two public meetings, which we will hold on April 2, 2009, April 15, 2009, and April 16, 2009, from 6 p.m. to 8 p.m. We must receive any requests for additional public meetings, in writing, at the address shown in the **ADDRESSES** section by April 1, 2009.

Comment-period end: To ensure consideration, we must receive any comments on or before May 1, 2009.

ADDRESSES: For where to review documents and submit comments, and public meeting locations, see ''Reviewing Documents and Submitting Comments'' in **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *Draft EIS:* Mr. Scott Richardson, Tucson Suboffice, U.S. Fish and Wildlife Service, 201 N. Bonita Ave., Suite 141, Tucson, AZ 85745; 520/670–6150 x 242.

Application and Draft HCP: Ms. Jennifer Christelman or Ms. Janine Spencer, Town of Marana, 11555 W. Civic Center Dr., Marana, AZ 85653 or Mr. Colby Henley, RECON, 525 West Wetmore Road, Suite 111, Tucson, AZ 85705. Information regarding the HCP can also be obtained on the Internet at *http://www.marana.com/hcp*.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act (NEPA), we announce that we have gathered the information necessary to: (1) Determine the impacts and formulate alternatives for the EIS, related to the potential issuance of an ITP to the Applicant; and (2) approve the HCP, which provides measures to minimize and mitigate the effects of the proposed incidental take of federally listed species to the maximum extent practicable, pursuant to section 10(a)(1)(B) of the Act (16 U.S.C. 1531 *et seq.*).

If we approve it, the 25-year permit would authorize the proposed incidental take of 13 covered species, including species currently listed under the Act, as well as species that may become listed under the Act in the future: (1) Lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*); (2) Southwestern willow flycatcher (*Empidonax traillii extimus*); (3) Yellow-billed cuckoo (*Coccyzus americanus occidentalis*); (4) Cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*); (5) Lowland leopard frog (*Rana yavapaiensis*); (6) Talus snails (*Sonorella* spp.); (7) Tucson shovel-nosed snake (*Chionactis occipitalis klauberi*); (8) Ground snake (*Sonora semiannulata*); (9) Sonoran desert tortoise (*Gopherus agassizii*); (10) Merriam's mouse (*Peromyscus merriami*); (11) Mexican garter snake (*Thamnophis eques megalops*); (12) Burrowing owl (*Athene cunicularia*); and (13) Pale Townsend's big-eared bat (*Corynorhinus townsendii*).

The proposed incidental take would occur within the Town of Marana in Pima County, Arizona, as a result of impacts from actions occurring under the authority of the Applicant. The Applicant has completed a draft HCP as part of the application package, as required by the Act. The application and associated documents provide measures to minimize and mitigate to the maximum extent practicable the effects of the proposed incidental take of covered species and effects to the

habitats upon which they depend. We have issued a draft EIS to evaluate the impacts of and alternatives for the possible issuance of an ITP.

Background

The Town of Marana in southern Arizona, including its recent annexation of 21,500 acres of State Trust lands along the Tortolita Fan, contains unique natural resource values within much of its undeveloped lands, including ironwood-dominated Arizona Upland and xeroriparian plant communities along the bajadas (fans) and slopes of the Tortolita Mountains and portions of the Santa Cruz River Corridor. One of the fastest growing communities in Arizona, the town recognizes the need to provide a solid economic base and desirable quality of life for its citizens. Subsequently, town leaders have acknowledged the need to balance economic, environmental, and human interests by implementing a community-wide conservation planning effort. The overall goals of this conservation planning effort are to: (1) Identify Federal, State Trust, County, and private lands that merit inclusion within a scientifically based conservation reserve designed to provide long-term protection for multiple species of concern and key natural communities; (2) identify appropriate mechanisms to best conserve these lands over the long-term; (3) provide for regional economic objectives, including the orderly and efficient development of certain private and State Trust lands and associated public and private infrastructure; (4) contribute to regional conservation planning efforts in eastern Pima County; and (5) facilitate compliance with the Act's Section 10(a)(1)(B) permit requirements.

Purpose and Need for Action

The purpose for which we prepared the draft EIS is to respond to the Applicant's request for an ITP for the proposed covered species related to activities that have the potential to result in incidental take. The Applicant's proposed HCP will balance the protection and conservation of the Town of Marana's unique natural resources with ongoing economic development and urbanization. The Applicant recognizes that the quality of life of its citizens is dependent upon an integrated environment which balances the needs of listed species and their habitats with human needs. The HCP will protect and conserve the covered species and their habitats for the continuing benefit of the people of the United States and provide a means and take steps to conserve the ecosystems depended on by the covered species. The HCP will ensure the long-term survival of the covered species through protection and management of the species and their habitats and ensure compliance with the Act, NEPA, and other applicable laws and regulations, pursuant to section 10(a)(1)(B) of the Act and its implementing regulations and policies.

The need for this action is based on the potential that activities proposed by the Applicant on lands under their jurisdiction could result in the incidental take of covered species, thus requiring an ITP. Section 9 of the Act prohibits the ''taking'' of threatened and endangered species. However, we are authorized, under limited circumstances, to issue permits to take federally listed species, when such a taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are in the Code of Federal Regulations (CFR) at 50 CFR 17.22 and 17.32, respectively. The term ''take'' under the Act means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect endangered and threatened species, or to attempt to engage in any such conduct. Our regulations define ''harm'' as significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The proposed ITP would allow approved incidental take that is consistent with the conservation guidelines in the Applicant's HCP. The development and implementation of the HCP will ensure that the Applicant meets the provisions for issuance of the ITP.

Proposed Action

The requested duration of the ITP is 25 years. The areas covered by the proposed ITP include those areas within the boundaries of the Town of Marana, approximately 76,500 acres. Activities proposed for coverage under the ITP include lawful activities that would occur consistent with Marana's General Plan and include, but are not limited to, maintenance of Marana operations, implementation of capital improvement projects, and issuance of land-use related permits, including those for residential and commercial development. Specific covered activities include road construction, public water infrastructure, parks and trails, airport infrastructure, and residential/commercial/industrial development.

The proposed action is the issuance of an ITP for listed and sensitive species within the Town of Marana in Pima County, Arizona, under section 10(a)(1)(B) of the Act. Incidental take anticipated under this ITP application is species and location specific, but may include direct take of individuals, as well as take in the form of habitat loss or modification. Habitat impacts for covered species range from approximately 100 acres for riparian species to approximately 8,000 acres for species using upland Sonoran desertscrub. The Applicant will develop and implement the HCP, as required by section 10(a)(2)(A) of the Act. The HCP will provide measures to minimize and mitigate the effects of the proposed incidental take on listed and sensitive species and their habitats. The biological goal of the HCP is to provide long-term protection for multiple species of concern and key natural communities through maintaining or improving the habitat conditions and ecosystem functions necessary for their survival and to ensure that any incidental take of listed species will not appreciably reduce the likelihood of the survival and recovery of those species. Mitigation measures include conservation of undisturbed open space, species surveys, habitat restoration, and implementation of conservation guidelines for all types of development and capital improvement projects.

Alternatives

Three alternatives were considered in the development of the draft EIS and draft HCP:

1. No Action/No Permit Alternative—No issuance of an ITP by the Service. This alternative would require the Applicant to evaluate each project or action on a case-by-case basis to address issues under the Act and avoid take of federally listed species. This alternative is the baseline against which the effects of the other alternatives are compared.

2. Town Projects and Actions Only—This alternative would seek ITP coverage for only the Applicant's own actions. Covered activities would only include the Town of Marana's public works and capital improvement projects. Private actions could be covered only through voluntary adoption of the HCP.

3. Town Actions, Discretionary Private Actions, and Voluntary Inclusion—This alternative is the proposed action for which the Applicant is seeking coverage through an ITP. Town actions and projects would be covered, as well as private actions where the Town maintains discretionary authority for approval. As in Alternative 2, private actions not subject to discretionary approval could

also be covered through voluntary inclusion.

Reviewing Documents and Submitting Comments

Please refer to TE–204887–0–0 when requesting documents or submitting comments.

Persons wishing to review the application, draft Habitat Conservation Plan (HCP), and draft Environmental Impact Statement (EIS) may obtain copies by calling or faxing the U.S. Fish and Wildlife Service Tucson Suboffice, 201 N. Bonita Ave, Suite 141, Tucson, AZ 85745 (520/670–6144, voice; 520/670–6155, fax). The application, draft HCP, and draft EIS will also be available for public inspection, by appointment, during normal business hours (8 a.m. to 4:30 p.m.) at the Tucson office. During the public comment period (see **DATES**), submit your written comments or data to the Assistant Field Supervisor at the Tucson address. Comments will also be accepted by fax at the fax number above, as well as by e-mail to *scott_richardson@fws.gov*.

Public comments submitted are available for public review at the Tucson address listed above. This generally means that any personal information you provide us will be available to anyone reviewing the public comments (see the Public Availability of Comments section below for more information).

Read-only downloadable copies of the application, draft HCP, and draft EIS are available on the internet at *http://www.fws.gov/southwest/es/arizona* and *http://www.marana.com*. A printed or CD copy of these documents is available upon request to Ms. Janine Spencer, Town of Marana, 11555 W. Civic Center Dr., Marana, AZ 85653; (520) 382–2600; *jspencer@marana.com*. Copies of the application, draft HCP, and draft EIS are also available for public inspection and review at the locations listed below (by appointment only at government offices):

- U.S. Fish and Wildlife Service, 201 N. Bonita Ave., Suite 141, Tucson, AZ 85745;
- U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, AZ 85021;
- Nanini Public Library, 7300 N. Shannon Road, Tucson, AZ 85741;
- Pima County Main Library, 101 North Stone Ave., Tucson, AZ 85701,
- Marana Branch Library, 13370 North Lon Adams Road, Marana, AZ 85653; and
- Oro Valley Public Library, 1305 West Naranja Drive, Oro Valley, AZ 85737.

Public Meetings

Three public meetings will take place, on April 2, 2009, at the Marana Municipal Complex, 11555 W. Civic Center Dr., Marana, AZ 85653, from 6 p.m. to 8 p.m., on April 15, 2009, at the Wheeler Taft-Abbett Sr. Library, 7800 N. Schisler Drive, Tucson, AZ 86743, from 6 p.m. to 8 p.m., and on April 16, 2009, at the Heritage Highlands Clubhouse Ballroom, 4949 W. Heritage Club Blvd., Tucson, AZ 85658, from 6 p.m. to 8 pm.

Public Availability of Comments

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

Authority

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22) and NEPA (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Thomas L. Bauer,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. E9–4319 Filed 2–27–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIB00000 L11500000.CB0000 LXSS024D0000: 4500006649]

Notice of Public Meeting: Resource Advisory Council to the Boise District, Bureau of Land Management, U.S. Department of the Interior

AGENCY: Bureau of Land Management, U.S. Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Boise District Resource Advisory Council (RAC), will hold a meeting as indicated below.

DATES: The meeting will be held April 2, 2009 at the Boise District Offices beginning at 9 a.m. and adjourning at 4 p.m. Members of the public are invited to attend, and comment periods will be held during the course of the day.

FOR FURTHER INFORMATION CONTACT: MJ Byrne, Public Affairs Officer and RAC Coordinator, BLM Boise District, 3948 Development Ave., Boise, ID 83705, Telephone (208) 384–3393.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in southwestern Idaho. Items on the agenda will include elections of Officers for the remainder of Fiscal Year 2009. An update and discussion about the development of the Four Rivers Field Office Resource Management Plan (RMP) will be held. Discussions will also be held about various methods to improve communications and meeting effectiveness. The goals and objectives of the RAC will be discussed with a prioritization of areas of interest. Hot Topics will be discussed by the District Manager. Field Office managers will provide highlights for discussion on activities in their offices. Agenda items and location may change due to changing circumstances. All RAC meetings are open to the public. The public may present written or oral comments to members of the Council. At each full RAC meeting time is provided in the agenda for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM Coordinator as provided above.

Dated: February 24, 2009.

Aden Seidlitz,

District Manager.

[FR Doc. E9–4309 Filed 2–27–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLIDT000000.L11200000.DD0000.241A.00]

Notice of Public Meeting, Twin Falls District Resource Advisory Council Meeting, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA), the Federal Advisory Committee Act of 1972 (FACA), and the Federal Lands Recreation Enhancement Act of 2004 (FLREA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Twin Falls District Resource Advisory Council (RAC) will meet as indicated below.

DATES: April 2, 2009. The Twin Falls District RAC meeting will begin at 8:30 a.m. (MST) and end no later than 4:30 p.m. at the Ameritel Inn in Twin Falls, Idaho, located at 539 Poleline Road. The public comment period for the RAC meeting will take place 8:45 a.m. to 9:15 a.m.

FOR FURTHER INFORMATION CONTACT: Heather Tiel-Nelson, Twin Falls District, Idaho, 2536 Kimberly Road, Twin Falls, Idaho 83301, (208) 736–2352.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Idaho. The Twin Falls District RAC business meeting agenda will include the following topics: Election of new chairperson, ''Dynamics of a Good Meeting'' training, Resource Management Planning training, a Recreation Resource Advisory Council report on fee proposals from the Forest Service, formation of an energy projects team, discussion of summer tour and existing team informational reports. Additional topics may be added and will be included in local media announcements. More information is available at *http://www.blm.gov/id/st/en/res/resource_advisory.3.html*.

All meetings are open to the public. The public may present written comments to the RAC in advance of or at the meeting. Each formal RAC meeting will also have time allocated for receiving public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the BLM as provided above.

Dated: February 20, 2009.

Bill Baker,

District Manager.

[FR Doc. E9–4311 Filed 2–27–09; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before February 14, 2009.

Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by March 17, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

CALIFORNIA

Los Angeles County

Angelus Funeral Home, (African Americans in Los Angeles) 1010 E. Jefferson Blvd., Los Angeles, 09000146

Fire Station No. 14, (African Americans in Los Angeles) 3401 S. Central Ave., Los Angeles, 09000147

Fire Station No. 30—Engine Company No. 30, (African Americans in Los Angeles) 1401 S. Central Ave., Los Angeles, 09000148

Lincoln Theater, (African Americans in Los Angeles) 2300 S. Central Ave., Los Angeles, 09000149

Prince Hall Masonic Temple, (African Americans in Los Angeles) 1050 E. 50th St., Los Angeles, 09000150

Second Baptist Church, (African Americans in Los Angeles) 1100 E. 24th St., Los Angeles, 09000151

Twenty-eighth Street YMCA, (African Americans in Los Angeles) 1006 E. 28th St., Los Angeles, 09000145

DISTRICT OF COLUMBIA

District of Columbia

Simpson, Billy, House of Seafood and Steak, 3815 Georgia Ave., NW., Washington DC, 09000152

GEORGIA

Burke County

Waynesboro Historic District, Roughly bounded by Walker St., 12th St., Waters St., Corker Row, 4th St., and Jones Ave., Waynesboro, 09000153

NEW YORK

Allegany County

Centerville Town Hall, Fairview Rd., Centerville, 09000154

Hamilton County

Hedges, The, The Hedges Rd., Indian Lake, 09000155

Livingston County

Engleside, 9086 McNair Rd., Dansville, 09000156

Orange County

Echo Lawn Estate, River Rd. at Stone Gate Dr., Balmville, 09000157

Milliken-Smith Farm, 279 Bailey Rd., Montgomery, 09000158

Rockland County

Blauvelt, Johannes Isaac, House, 820 Western Hwy., Blauvelt, 09000159

VERMONT

Windham County

Homestead-Horton Neighborhood Historic District, Homestead Place, Horton Place, Canal St., Brattleboro, 09000160

VIRGINIA

Charlottesville Independent City

Oakhurst-Gildersleeve Neighborhood Historic District, Oakhurst Circle, Gildersleeve Wood, Valley Rd., Valley Circle, and part of Maywood Ln., and Jefferson Park Ave., Charlottesville, 09000161

Rockingham County

Bogota, 5375 Lynnwood Rd., Port Republic, 09000162

Winchester Independent City

Mount Hebron Cemetery and Gatehouse, 305 E. Boscawen St., Winchester, 09000163

WISCONSIN

Vilas County

Jabodon, 1460 Everett Rd., Washington, 09000164

Request for REMOVAL has been made for the following resources:

NORTH DAKOTA

Burleigh County

Liberty Memorial Bridge, 1–94, Business Loop, across the Missouri River, Bismark, 97000172

Traill County

Blanchard Bridge, Across the Elm River, unnamed Co. Rd., approx. .5 mi. S. of Blanchard, E. of ND 18, Blanchard, 97000189

Goose River Bridge, Across the Goose River, unnamed Co. Rd. approx 6 mi. E. and 1 mi. N. of Hillsboro, Hillsboro, 97000187

Porter Elliott Bridge, Across the Sheyenne River, unnamed Co. Rd., approx 5 mi. E. and 1 mi. N. of Hillsboro, Hillsboro, 97000193

Sarles, O.C., House, 2nd Ave. and 3rd St., NE., Hillsboro, 85000562

Flat Iron Building, 112 W. Central Ave., part of the Minot Commercial Historic District which is bounded by Soo Line Railroad tracks, Burdick Expressway, and Broadway, Minot, 86002823

[FR Doc. E9–4276 Filed 2–27–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from January 12 to January 16, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St. NW., Washington, DC 20240; in person (by appointment), 1201 Eye St. NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: February 24, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name

Arizona, Apache County, Sage Memorial School of Nursing, Ganado Mission, Jct. AZ 264 and 291, Navajo Reservation, Ganado, 09000082, Listed, 1/16/09

Arizona, Cochise County, Fry Pioneer Cemetery, Between 6th and 7th Sts., a half block N. of Fry Blvd., Sierra Vista, 08001312, Listed, 1/15/09

Arizona, Maricopa County, Bragg's Pies Building, 1301 Grand Ave., Phoenix, 08001313, Listed, 1/16/09

California, Tuolumne County, Stanislaus Branch, California Forest and Range Experiment Station, Forest Rd. 4N13B, Strawberry, 08001315, Listed, 1/15/09

Colorado, El Paso County, Chadbourn Spanish Gospel Mission, 402 S. Conejos St., Colorado Springs, 08001316, Listed, 1/14/09

Colorado, Montezuma County, Montezuma Valley National Bank and Store Building, 2–8 Main St., Cortez, 08001317, Listed, 1/15/09

Georgia, Cook County, United States Post Office-Adel, Georgia, 115 E. 4th St., Adel, 08001319, Listed, 1/15/09

Georgia, Jefferson County, Bartow Historic District, Roughly centered along U.S. Hwy. 221, U.S. Hwy. 319 and the CSX rail line, Bartow, 08001320, Listed, 1/13/09

Kansas, Rice County, Beckett, Charles K., House, 210 W. Main, Sterling, 08001350, Listed, 1/16/09

Kansas, Shawnee County, Hopkins House, 6033 SE U.S. Hwy. 40, Tecumseh, 08001353, Listed, 1/16/09

Massachusetts, Essex County, Joffre, (shipwreck), Address Restricted, Massachusetts, 08000887, Listed, 1/16/09 (Eastern Rig Dragger Fishing Vessel Shipwrecks in the Stellwagen Bank National Marine Sanctuary)

Missouri, Greene County, St. Paul Block, 401 S. Ave., Springfield, 08001322, Listed, 1/15/09 (Springfield, Missouri MPS AD)

Missouri, Pemiscot County, Delmo Community Center, 1 Delmo St., Homestown, 08001323, Listed, 1/15/09

Montana, Custer County, Holy Rosary Hospital, 310 N. Jordan and 2007 Clark St., Miles City, 08001324, Listed, 1/15/09

Montana, Lake County, Olsson, Don E., House and Garage, 503 4th Ave. SW., Ronan, 08001325, Listed, 1/15/09

Pennsylvania, Philadelphia County, Alfred Newton Richards Medical Research Laboratories and David Goddard Laboratories Buildings, 33700–3710 Hamilton Walk, University of Pennsylvania, Philadelphia, 09000081, Listed, 1/16/09

Pennsylvania, York County, Leibhart, Byrd, Site (36YO170), Address Restricted, Long Level vicinity, 84003955, Listed, 1/14/09

Wisconsin, Ashland County, Big Bay Sloop shipwreck (sloop), Address Restricted, La Pointe, 08001327, Listed, 1/14/09 (Great Lakes Shipwreck Sites of Wisconsin MPS)

Wisconsin, Columbia County, Bacon, Clara F., House, 509 Madison Ave., Lodi, 08001328, Listed, 1/14/09

Wisconsin, Columbia County, Lewis, Frank T. and Polly, House, 509 N. Main St., Lodi, 08001329, Listed, 1/14/09

Wisconsin, Manitowoc County, Continental shipwreck (bulk carrier), Address Restricted, Two Rivers vicinity, 08001330, Listed, 1/14/09 (Great Lakes Shipwreck Sites of Wisconsin MPS)

Wisconsin, Milwaukee County, Lumberman shipwreck (schooner), Address Restricted, Oak Creek vicinity, 08001331, Listed, 1/14/09 (Great Lakes Shipwreck Sites of Wisconsin MPS)

[FR Doc. E9–4278 Filed 2–27–09; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–601]

In the Matter of Certain 3G Wideband Code Division Multiple Access (WCDMA) Handsets and Components Thereof; Notice of Commission Determination Not To Review an Initial Determination Terminating the Investigation in Its Entirety Based on a Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (''ALJ'') initial determination (''ID'') (Order No. 29), terminating the investigation in its entirety based on a settlement agreement.

FOR FURTHER INFORMATION CONTACT: Megan M. Valentine, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–2301. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted Inv. No. 337–TA–601 on April 27, 2007, based on a complaint filed by InterDigital Communications Corp. of King of Prussia, Pennsylvania and InterDigital Technology Corp. of Wilmington, Delaware (collectively, ''InterDigital'') on March 23, 2007. 72 FR 21049 (March 23, 2007). The complaint, as amended,

alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain 3G wideband code division multiple access handsets and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 6,674,791; 6,693,579; 7,117,004; 7,190,966; and 7,286,847. The notice of investigation named Samsung Electronics Co., Ltd. of Seoul, Korea; Samsung Electronics America, Inc. of Ridgefield Park, New Jersey; and Samsung Telecommunications America LLC of Richardson, Texas (collectively, ''Samsung'') as respondents.

On February 3, 2009, InterDigital and Samsung filed a joint motion to terminate the investigation in its entirety based on a settlement agreement. On February 4, 2009, the Commission Investigative Attorney filed a response in support of the joint motion.

On February 6, 2009, the ALJ granted the joint motion to terminate the investigation in its entirety. The ALJ found that the motion complied with the requirements of Commission Rule 210.21 (19 CFR 210.21). The ALJ also concluded that, pursuant to Commission Rule 210.50(b)(2) (19 CFR 210.50(b)(2)), there is no evidence that termination of this investigation will prejudice the public interest. No petitions for review of this ID were filed.

The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: February 24, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–4297 Filed 2–27–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–640]

In the Matter of: Certain Short-Wavelength Light Emitting Diodes, Laser Diodes and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 53) of the presiding administrative law judge (''ALJ'') granting complainant's motion to amend the complaint and the notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On March 25, 2008, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Gertrude Neumark Rothschild of Hartsdale, New York, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain short-wavelength light emitting diodes, laser diodes and products containing same that infringe certain claims of U.S. Patent No. 5,252,499. 73 FR 1575 (March 25, 2008). The complainant named numerous entities as respondents.

On January 12, 2009, complainant Rothschild moved to amend the Second Amended Complaint and Notice of Investigation in order to seek to correct the names of respondents Matsushita Electric Industrial Co., Ltd. (to Panasonic Corporation) and Uni-light Touchtek Corporation (to UniLite Corporation), and to remove references to a number of respondents which have been terminated from the investigation.

On January 30, 2009, the ALJ issued Order No. 53 granting complainant's motion. No party petitioned for review of the subject ID. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: February 24, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–4296 Filed 2–27–09; 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

Notice is hereby given that on February 11, 2009, a Consent Decree in *United States* v. *Northrop Grumman Space & Mission Systems Corp., et al.*, Civil Action No. 09–0866, was lodged with the United States District Court for the Central District of California.

The Consent Decree resolves claims brought by the United States, on behalf of the United States Environmental Protection Agency (''EPA''), and the California Department of Toxic Substances Control (''DTSC'') under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9607, and Section 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6973, related to the releases and threatened releases of hazardous substances at the Puente Valley Operable Unit of the San Gabriel Valley Area 4 Superfund Site (''Site'') in Los Angeles County, California.

The Consent Decree resolves the liability of Northrop Grumman Space & Mission Systems Corp. (''Northrop'' or ''Performing Settling Defendant'') and 43 cashout parties associated with 17 source properties and their related

entities (''Contributing Settling Defendants'') with respect to the groundwater contamination and its investigation and treatment as set forth in the Interim Record of Decision, as modified by the Explanation of Significant Differences. The Consent Decree requires the Performing Settling Defendant, on behalf of all of the Settling Defendants, to construct the intermediate zone remedy to address groundwater contamination and operate it for eight years from the operational and functional date of the groundwater treatment system for the intermediate zone at an estimated cost of $21 million, pay $465,420.90 to EPA for past costs, and pay $90,000 to DTSC for past response costs. The Performing Settling Defendant represents that between 2002 and June 30, 2007, it incurred costs in excess of seven million dollars ($7 million) to implement the intermediate zone remedial action in compliance with the Unilateral Administrative Order No. 2002–06 issued on March 21, 2002, pending negotiations of the Consent Decree. Settling Defendants who currently own source properties within the PVOU are required to provide access and all of the Settling Defendants are required to retain records and provide EPA access to information. The Consent Decree gives all Settling Defendants a covenant not to sue. The Consent Decree reserves the United States' right to sue the Settling Defendants for the final Record of Decision and is subject to standard reopeners and reservations of rights.

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. *Northrop Grumman Space & Mission Systems Corp.*, D.J. Ref. 90–11–2–354/16. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at U.S. EPA Region IX at 75 Hawthorne Street, San Francisco, California 94105. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to *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 $95.50 (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.

Henry Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E9–4367 Filed 2–27–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Application

Pursuant to 21 U.S.C. 958(i), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in schedule I or II, and prior to issuing a registration under 21 U.S.C. 952(a)(2), authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Title 21 Code of Federal Regulations 1301.34(a), this is notice that on December 22, 2008, Sigma Aldrich Manufacturing LLC., 3500 Dekalb Street, St. Louis, Missouri 63118, has made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the basic classes of controlled substances listed in schedule I and II:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Gamma Hydroxybutyric Acid (2010).	I
Methaqualone (2565)	I
Alpha-ethyltryptamine (7249)	I
Ibogaine (7260)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
4-Bromo-2,5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392).	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
N-Hydroxy-3,4-methylenedioxyamphetamine (7402).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (MDMA) (7405).	I
4-Methoxyamphetamine (7411)	I
Bufotenine (7433)	I
Diethyltryptamine (7434)	I
Dimethyltryptamine (7435)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
1-[1-(2-Thienyl)cyclohexyl]piperdine (7470).	I
N-Benzylpiperazine (BZP) (7493)	I
Heroin (9200)	I
Normorphine (9313)	I
Etonitazene (9624)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Nabilone (7379)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
Opium powdered (9639)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances for sale to research facilities for drug testing and analysis.

Any bulk manufacturer who is presently, or is applying to be, registered with DEA to manufacture such basic classes of controlled substances may file comments or objections to the issuance of the proposed registration and may, at the same time, file a written request for a hearing on such application pursuant to 21 CFR 1301.43, and in such form as prescribed by 21 CFR 1316.47.

Any such comments or objections should be addressed, in quintuplicate,

to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than April 1, 2009.

This procedure is to be conducted simultaneously with, and independent of, the procedures described in 21 CFR § 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice published in the **Federal Register** on September 23, 1975, (40 FR 43745–46), all applicants for registration to import the basic class of any controlled substance in schedule I or II are, and will continue to be, required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, that the requirements for such registration pursuant to 21 U.S.C. 958(a); 21 U.S.C. 823(a); and 21 CFR 1301.34(b), (c), (d), (e), and (f) are satisfied.

Dated: February 23, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–4271 Filed 2–27–09; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review: Comment Request

February 24, 2009.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35) and 5 CFR 1320.13. OMB approval has been requested by March 10, 2009. A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Darrin King on 202–693–4129 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov*. Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), E-mail: *OIRA_submission@omb.eop.gov*. Comments and questions about the ICR listed below should be received 5 days prior to the requested OMB approval date.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title of Collection: Recovery Act—Applications for Unemployment Insurance Modernization Incentive Payments.

OMB Control Number: Pending.

Frequency of Collection: One time collection.

Affected Public: State Workforce Agencies.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 424.

Total Estimated Annual Costs Burden (other than hourly costs): $0.

Description: Section 2003(f) of the American Recovery and Reinvestment Act of 2009 (ARRA) provides for unemployment insurance (UI) ''modernization incentive payments'' to be made from the Unemployment Trust Fund (UTF) to the states. The total amount available for all states is $7 billion dollars. To obtain its share, the state must make an application to the Department of Labor demonstrating that its UI law contains certain benefit eligibility provisions. The last date on which an incentive distribution may be made is September 30, 2011. When applying for a share of the UI modernization incentive payments, a state must document that the provisions of its law meet the requirements for obtaining an incentive payment. The state is also required to describe how it intends to use any incentive payment to improve or strengthen its UI program.

Why are we requesting Emergency Processing? If DOL were to comply with standard PRA clearance procedures, it would not be able to comply with the ARRA-mandated payment schedule because procedures for these payments must be in place immediately. The statute provides that states need the means to access the funds as soon as possible. Otherwise, harm to the nation's economic recovery could ensue. Finally, in preparing the guidelines, the Department has taken all necessary steps to consult with state workforce agencies in order to minimize the burden of collecting the information while adhering to ARRA payment and monitoring provisions.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–4279 Filed 2–27–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 23, 2009

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration,

comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Training Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Unemployment Insurance Trust Fund Activity.

OMB Control Number: 1205–0154.

Agency Form Numbers: ETA 8401, ETA 8403, ETA 8405, ETA 8413, ETA 8414, ETA 2112.

Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Respondents: 53.

Total Estimated Annual Burden Hours: 1,802.

Total Estimated Annual Costs Burden: $0.

Description: These data collection instruments comprise the Unemployment Trust Fund (UTF) management reports. These reports assure that UTF contributions collected are immediately paid over to the Secretary of the Treasury in conformity with Section 303(a)(4) of the Social Security Act (SSA) and section 3304(a)(3) of the Federal Unemployment Tax Act (FUTA); and that expenditure of all money withdrawn from the unemployment fund of a state is used exclusively for the payment of benefits, exclusive of refund (SSA, Section 303(a)(5), FUTA section 3304(a)(4)). A minor change is made to include new reporting required as a result of the American Recovery and Reinvestment Act (Pub. L. 111–1). For additional information, see related notice published at Volume 73 FR 73958 on December 4, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–4298 Filed 2–27–09; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

February 23, 2009.

The Department of Labor (DOL) hereby announces the submission of the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation; including among other things a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or by contacting Mary Beth Smith-Toomey on 202–693–4223 (this is not a toll-free number)/e-mail: *DOL_PRA_PUBLIC@dol.gov.*

Interested parties are encouraged to send comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor—ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202–395–7316/Fax: 202–395–6974 (these are not toll-free numbers), e-mail: *OIRA_submission@omb.eop.gov* within 30 days from the date of this publication in the **Federal Register**. In order to ensure the appropriate consideration, comments should reference the OMB Control Number (see below).

The OMB is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Training Administration.

Type of Review: Revision of a currently approved collection.

Title of Collection: Evaluation of the Individual Training Account Experiment.

OMB Control Number: 1205–441.

Agency Form Numbers: N/A.

Affected Public: Individuals or Households.

Total Estimated Number of Respondents: 3,360.

Total Estimated Annual Burden Hours: 1,120.

Total Estimated Annual Costs Burden: $0.

Description: Approval is sought for an additional follow-up survey to be conducted as part of the Individual Training Account (ITA) Experiment. The experiment is designed to test three different approaches to providing ITA's. Data from this follow-up survey of ITA customers will be used by the Department to understand experiences inside the workforce system and labor market outcomes for ITA customers. Measures of these experiences and outcomes are necessary to the evaluation of the three approaches. For additional information, see related notice published at Volume 73 FR 42597 on July 22, 2008.

Darrin A. King,

Departmental Clearance Officer.

[FR Doc. E9–4305 Filed 2–27–09; 8:45 am]

BILLING CODE 4510–FM–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; National Council on the Arts 166th Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on March 27, 2009 in Room M–09 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting, from 9 a.m. to 12 p.m. (ending time is approximate), will be open to the public on a space available basis. After opening remarks and announcements, the meeting will include updates and presentations to be determined. After the presentations the

Council will review and vote on applications and guidelines, and the meeting will conclude with a general discussion.

If, in the course of the open session discussion, it becomes necessary for the Council to discuss non-public commercial or financial information of intrinsic value, the Council will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b. Additionally, discussion concerning purely personal information about individuals, submitted with grant applications, such as personal biographical and salary data or medical information, may be conducted by the Council in closed session in accordance with subsection (c)(6) of 5 U.S.C. 552b.

Any interested persons may attend, as observers, Council discussions and reviews that are open to the public. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY–TDD 202/682–5429, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from the Office of Communications, National Endowment for the Arts, Washington, DC 20506, at 202/682–5570.

Dated: February 25, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Office of Guidelines and Panel Operations.

[FR Doc. E9–4327 Filed 2–27–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Request for Input (RFI)—National Cyber Leap Year

AGENCY: The National Coordination Office (NCO) for Networking Information Technology Research and Development (NITRD), NSF.

ACTION: Request for Input (RFI).

FOR FURTHER INFORMATION CONTACT: Tomas Vagoun at *Vagoun@nitrd.gov* or (703) 292–4873. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

DATES: To be considered, submissions must be received by April, 15, 2009.

Overview: This Request for Input No. 3 (RFI–3) is the third issued under the Comprehensive National Cybersecurity Initiative (CNCI), established within Homeland Security Presidential Directive (HSPD)–23. RFI–3 was developed by the Networking and Information Technology Research and Development (NITRD) Program Senior Steering Group (SSG) for Cybersecurity to invite participation in a National Cyber Leap Year whose goal is an integrated national approach to make cyberspace safe for the American way of life. Over 160 responses were submitted to the first RFI issued by the NITRD SSG (October 14, 2008), indicating a strong desire by the technical community to participate. RFI–2 (issued on December 30, 2008) expanded the opportunity for participation by permitting submitters to designate parts of submissions as proprietary. RFI–3 presents prospective cyber security categories derived from responses to RFI–1 for further consideration.

Background: We are a cyber nation. The U.S. information infrastructure—including telecommunications and computer networks and systems and the data that reside on them—is critical to virtually every aspect of modern life. This information infrastructure is increasingly vulnerable to exploitation, disruption, and destruction by a growing array of adversaries. The President's CNCI plan calls for leap-ahead research and technology to reduce vulnerabilities to asymmetric attack in cyberspace. Unlike many research agenda that aim for steady progress in the advancement of science, the leap-ahead effort seeks just a few revolutionary ideas with the potential to reshape the landscape. These *game-changing* technologies (or non-technical mechanisms that are made possible through technology), developed and deployed over the next decade, will fundamentally change the cyber game into one where the good guys have an advantage. Leap-ahead technologies are so-called because they enable us to leap over the obstacles preventing us from being where we want to be. These advances may require years of concerted research and development to be fully realized; good ideas often do. However, the intent is to *start now* and gain momentum as intermediate results emerge.

Objective: The National Cyber Leap Year has two main goals: (1) Constructing a national research and technology agenda that both identifies the most promising ideas and describes the strategy that brings those ideas to fruition; and (2) jumpstarting game-changing, multi-disciplinary development efforts. The Leap Year will run during fiscal year 2009, and will comprise two stages: *Prospecting and focusing*.

Stage One canvasses the cybersecurity community for ideas. Our aim is to hear from all those who wish to help.

The heart of Stage Two, which begins March 1, 2009, is a series of workshops to explore the best ideas from Stage One. As the year progresses, we will publish four types of findings: (1) *Game-changers*—descriptions of the paradigm-busters that technology will make possible; (2) *Technical Strategy*—as specifically as possible, the invention and/or research that needs to be done; (3) *Productization/Implementation*—how the capability will be packaged, delivered, and used, and by whom; and (4) *Recommendations*—prescriptions for success, to include funding, policies, authorities, tasking—whatever would smooth the way to realization of the game-changing capability.

Deadline for Submission under this RFI–3: The third, and final round of the Stage One cycle is covered by this RFI–3 and will close April 15, 2009.

Stage One Description

What We are Looking for: Contributors may submit up to 3 leap-ahead technology concepts. Multidisciplinary contributions from organizations with cybersecurity interests are especially encouraged. Cognizant of the limits of conventional studies and reports, we have given substantial thought to what framework and methodology might render the community's best ideas understandable, compelling, and actionable to those who need to support them, fund them, and adopt them. Since our search is for game-changing concepts, we ask that submitters explain their ideas in terms of a game. Many ideas will fall into the following three categories. Ideas that:

Morph the Gameboard (Change the defensive terrain [permanently or adaptively] to make it harder for the attacker to maneuver and achieve his goals.)

Example: Non-persistent virtual machines—every time the enemy takes a hill, the hill goes away.

Change the Rules (Lay the foundation for cyber civilization by changing network protocols and norms to favor our society's values.)

Example: The no-call list—direct marketers have to ''attack'' on customer terms now.

Raise the Stakes (Make the cost to play less advantageous to the attacker by raising risk, lowering value, etc.)

Example: Charging for email—making the SPAMmer ante up means a lot more fish have to bite for SPAM to pay.

Ideas that change the game in some other dimension are also welcome; just be sure to explain how. The rationale for

why the idea is game-changing should be the central focus of each submission.

Submitters are encouraged to explore the following categories, which were derived by the NITRD SSG from the review of RFI–1 submissions. These categories encompass promising concepts identified by compelling submissions and may be fruitful themes for additional game-changing insights:

Attribution—Technologies and methods to establish that a particular entity (person, host, event) is the originator of an object (*e.g.* data) or the cause of an effect.

Cyber Economics—Security decision-making frameworks that incorporate economic insights; understanding and altering economic value-chains to make cyber security exploits increasingly expensive for attackers.

Disaster Recovery—Recovery in the event of a large-scale disruption of national cyber assets.

Network Ecology—Incorporating end-to-end network management techniques to control access to and allocation of network resources; modeling of acceptable host and network activities.

Policy-based Configuration/ Implementation—Standards-based security policy definitions and enforcement frameworks; architectures and techniques for implementing fine-coarse access and permission controls.

Randomization/Moving Target—Software diversity that randomizes code structure; virtualization techniques that hide, obscure, move, and alter; randomizing and obfuscating network resources, IP addresses, and the operating system; time-varying, crypto-based identities to identify services, hosts, interfaces, networks and users.

Secure Data—Building provenance and access controls into the fabric of digital data.

Software Assurance—Security-focused system assurance programming languages.

Virtualization—Cloud-based virtual desktops for stateless thin clients; high-security hypervisors; least-authority execution via adaptive sandboxes.

Submissions in areas outside these categories will also be considered.

Who can Participate: This RFI–3 is open to all and we especially encourage public- and private-sector groups (e.g., universities, government laboratories, companies, non-profit groups, user groups) with cybersecurity interests to participate. Collaborative, multidisciplinary efforts are also highly encouraged. Participants in Stage One must be willing to participate in Stage Two should one of their ideas be selected. Excluding proprietary information, participants must also be willing to have their ideas posted for discussion on a public Web site and/or included in our final report.

How We Will Use It: The best ideas from Stage One will go on to Stage Two. Non-proprietary elements of Stage One submissions may be posted on our Web site for elaboration and improvement, as a key goal of the Leap Year is to engage diverse sectors (*e.g.*, government, academia, commercial, international) in identifying multidimensional strategies and, where it makes sense, in rolling up their sleeves and starting to work. Submissions crafted with that larger community in mind will be the most compelling and influential.

Leap Year interim results and emerging guidance will be posted at: *http://www.nitrd.gov/leapyear/*.

Questions and submissions should be addressed to: *leapyear@nitrd.gov*.

In accordance with FAR 15.202(3), responses to this notice are not offers and cannot be accepted by the Government to form a binding contract. Responders are solely responsible for all expenses associated with responding to this RFI–3, including any subsequent requests for proposals.

All responses must be no more than two pages long (12 pt font, 1″ margins) and in this form:

RFI Name: RFI–3—National Cyber Leap Year.

Title of Concept

RFI Focus Area (Morph the gameboard, Change the rules, Raise the stakes.)

Submitter's Contact Information—Name, Organization, Address, Telephone number, E-mail address.

Summary of Who You are—Credentials, group membership.

Concept—What is the idea? Explain why it would change the game. Introducing a good idea alone is not sufficient; you must explain how it changes the game.

Vision—Make us believe in your idea. (What would the world look like if this were in place? How would people get it, use it? What makes you think this is possible? What needs to happen for this to become real? Which parts already exist; which parts need to be invented?)

Method—What process did you use to formulate and refine your concept? What assumptions or dependencies underlie your analysis?

Dream Team—Who are the people you'd need to have on your team to make this real? If you just know disciplines that's okay. If you have names, explain what those people do. If your idea is selected for further consideration, we will do our best to bring these people together for a Stage Two workshop.

Labeling of Proprietary Information—Clearly label any part of the submission designated as proprietary. The proprietary information will be restricted to government use only. If the submission is selected for Stage Two, we will work with the submitter to determine exactly what information warrants proprietary protection and to establish appropriate controls for managing, protecting, and negotiating as appropriate the relevant intellectual property rights.

Responses must be submitted via *http://www.nitrd.gov/leapyear/* or e-mailed to *leapyear@nitrd.gov*, and must be received by April 15, 2009. Appendix A contains a sample submission and review considerations.

Appendix A—Sample Submission

Who You Are—http://quieteveningathome.org—We are a 501c3 group with 50,000 members dedicated to the preservation of the dinner hour as the core of American civilization.

Game-changing Dimension—Change the rules.

Concept—Telemarketers are using our resources and time to market their products. They can call and interrupt our dinners and use our own telephones to reach us. What if we changed the rules to ''don't call us, we'll call you?'' Changing this rule changes the game to one where we decide which marketers to contact and when, returning control of the dinner hour to us.

Vision—The vision is a national do-not-call register. People should be able to go to *http://donotcall.gov* and register their phone number. It would be illegal for telemarketers who have not been given permission to call someone. If a telemarketer makes an illegal call, the recipient should be able to report them to a government agency and they should be fined. The technology to do this is easy, we are not sure about the laws and policies. Courts have ruled differently on this issue at different times. We think the political climate is friendly today for Federal legislation.

Method—We announced our search for ideas on our website and submissions were made there. We also publicized through restaurant and catering associations with whom we often partner, who offered interruption-free free meals for brainstorming sessions. Participation was not limited to members, but could not be anonymous, since it was our intention to follow up with submitters. The Board of Directors of QEAH enlisted the aid of Prandia University to work with the submitters of the best ideas to develop them into even better ideas. The Board

ensured all the aspects described in the Leap Year RFI were addressed in our final submissions.

Dream Team—Federal Trade Commission, Federal Communications Commission, constitutional lawyer, Telemarketers' Association, Consumers Union, Oracle or other database company.

Review Considerations

Submissions will be reviewed by the NITRD Senior Steering Group for Cybersecurity using the following considerations:

Would it change the game?

How clear is the way forward?

What heights are the hurdles that may be found in the way forward?

Submitted by the National Science Foundation for the National Coordination Office (NCO) for Networking and Information Technology Research and Development (NITRD) on February 25, 2009.

Dated: February 25, 2009.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E9–4321 Filed 2–27–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0054]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC invites public comment about our intention to request the OMB's approval for renewal of an existing information collection that is summarized below. We are required to publish this notice in the **Federal Register** under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 140, ''Financial Protection Requirements and Indemnity Agreements.

2. *Current OMB approval number:* 3150–0039.

3. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

4. *Who is required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR Part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70.

5. *The number of annual respondents:* 91.

6. *The number of hours needed annually to complete the requirement or request:* 1307.

7. *Abstract:* 10 CFR Part 140 of the NRC's regulations specifies information to be submitted by licensees to enable the NRC to assess (a) the financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, as amended.

Submit, by May 1, 2009, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html*. The document will be available on the NRC home page site for 60 days after the signature date of this notice. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed. Comments submitted should reference Docket No. NRC–2009–0054. You may submit your comments by any of the following methods. Electronic comments: Go to *http://www.regulations.gov* and search for Docket No. NRC–2009–0054. Mail comments to NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Questions about the information collection requirements may be directed to the NRC Clearance Officer, Gregory Trussell (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–6445, or by e-mail to *INFOCOLLECTS.Resource@NRC.GOV*.

Dated at Rockville, Maryland, this 23rd day of February 2009.

For the Nuclear Regulatory Commission,

Gregory Trussell

NRC Clearance Officer, Office of Information Services.

[FR Doc. E9–4334 Filed 2–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

South Carolina Electric and Gas Company Acting for Itself and as Agent for the South Carolina Public Service Company (Also Refered to as Santee Cooper) Virgil C. Summer Nuclear Station Units 2 and 3 Combined License Application; Notice of an Extension to the Environmental Scoping Period

South Carolina Electric and Gas Company (SCE&G) acting for itself and as an agent for South Carolina Public Service Company (also referred to as Santee Cooper) has submitted an application for combined licenses (COLs) to build Units 2 and 3 at its Virgil C. Summer Nuclear Station (VCSNS) site, located on approximately 3,600 acres in Fairfield County, South Carolina, on the Broad River, approximately 15 miles west of the county seat of Winnsboro and 26 miles northwest of Columbia, South Carolina. The application for the COLs was submitted to the U.S. Nuclear Regulatory Commission (NRC) on March 27, 2008, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52.

A notice of intent to prepare an environmental impact statement (EIS) and conduct scoping was published in the **Federal Register** on January 5, 2009 (74 FR 323–324) and scoping meetings were held in Winnsboro and Blair, South Carolina on January 27 and 28, 2009, respectively. After the meetings, Mayor Gregrey Ginyard of Jenkinsville,

South Carolina (located approximately 2 miles from the proposed VCSNS Units 2 and 3) requested an extension of the scoping period. NRC staff has concluded that Mayor Ginyard's reasonable request, coupled with comments provided during the scoping meetings, amounts to a special circumstance that warrants an extension of the scoping period.

The purpose of this notice is to inform the public that the NRC is extending the current scoping period by 30 days. Members of the public may send written comments on the scope of the VCSNS COLs environmental review to the Chief, Rulemaking, Directives and Editing Branch, Office of Administration, Mailstop TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. To ensure that comments will be considered, written comments must be postmarked by April 6, 2009. Electronic comments may be sent by e-mail to the NRC at *Summer.COLEIS@nrc.gov*. Electronic submissions must be sent no later than April 6, 2009, to ensure that they will be considered.

Information about the proposed action, the EIS, and the scoping process may be obtained from Ms. Patricia Vokoun or Mr. Paul Michalak at 1–800–368–5642, extensions 3470 or 7612, respectively; at the U.S. Nuclear Regulatory Commission, Mailstop T–6D32, Washington, DC 20555–0001; or via e-mail at *Patricia.Vokoun@nrc.gov* or *Paul.Michalak@nrc.gov*.

Dated at Rockville, Maryland, this 24th day of February 2009.

For the Nuclear Regulatory Commission.

Nilesh Chokshi,

Deputy Director, Division of Site and Environmental Reviews, Office of New Reactors.

[FR Doc. E9–4336 Filed 2–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–029–COL, 52–030–COL; ASLBP No. 09–879–04–COL–BD01]

Progress Energy Florida, Inc.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28,710 (1972), and the Commission's regulations, *see* 10 CFR 2.104, 2.300, 2.303, 2.309, 2.311, 2.318, and 2.321, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

Progress Energy Florida, Inc.

Levy County Nuclear Power Plant, Units 1 and 2

This proceeding concerns a Petition to Intervene and Request for Hearing from the Green Party of Florida, the Ecology Party of Florida, and Nuclear Information and Resource Service, which was submitted in response to a December 8, 2008 Notice of Order, Hearing, and Opportunity to Petition for Leave to Intervene on a Combined License for the Levy County Nuclear Power Plant, Units 1 and 2 (73 FR 74,532). The petitioners challenge the application filed by Progress Energy Florida, Inc. pursuant to Subpart C of 10 CFR Part 52 for a combined license for Levy County Nuclear Power Plant, Units 1 and 2, which would be located in Levy County, Florida.

The Board is comprised of the following administrative judges:

Alex S. Karlin, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Anthony J. Baratta, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

William H. Murphy, 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 23rd day of February 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–4338 Filed 2–27–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Week of March 2, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

ADDITIONAL ITEMS TO BE CONSIDERED:

Week of March 2, 2009

Wednesday, March 4, 2009

2:45 p.m. Discussion of Security Issues (Closed—Ex. 1).

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html*.

* * * * *

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 by mail to several hundred 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). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *darlene.wright@nrc.gov*.

Dated: February 25, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–4436 Filed 2–26–09; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–00]

Office of Federal and State Materials and Environmental Management Programs, Annual Decommissioning Report; Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission's (NRC's) Office of Federal and State Materials and Environmental Management Programs (FSME) is announcing the availability of NUREG–1814, Revision 2, ''Status of Decommissioning Program—2008 Annual Report.'' This NUREG provides a comprehensive overview of the NRC's decommissioning program. Its purpose is to provide a stand-alone reference document, which describes the decommissioning process and summarizes the current status of all decommissioning activities including the decommissioning of complex decommissioning sites, commercial reactors, research and test reactors, uranium mill tailings facilities, and fuel cycle facilities. In addition, this report discusses accomplishments in the decommissioning program since publication of the 2007 Annual Report (SECY–07–0209); identifies the key decommissioning program issues, which the staff will address in fiscal year 2009; and provides information Agreement States have supplied on decommissioning in their States.

ADDRESSES: NUREG–1814, Revision 2, is available for inspection and copying for a fee at the Commission's Public Document Room, U.S. NRC's Headquarters Building, 11555 Rockville Pike (First Floor), Rockville, Maryland. The Public Document Room is open from 7:45 a.m. to 4:15 p.m., Monday through Friday, except on Federal holidays. NUREG–1814, Revision 2, also is available electronically from the ADAMS Electronic Reading Room on the NRC Web site at: *http://www.nrc.gov/reading-rm/adams.html,* and on the NRC Web site at: *http://www.nrc.gov/reading-rm/doc-collection.*

Copies of NUREG–1814, Revision 2, also may be purchased from one of these two sources: (1) The Superintendent of Documents, U.S. Government Printing Office, Mail Stop: SSOP, Washington, DC 20402–0001; Internet: *http://bookstore.gpo.gov/;* telephone: 202–512–1800; fax: 202–512–2250; or (2) The National Technical Information Service, Springfield, VA 22161–0002, Internet: *http://www.ntis.gov;* telephone 1–800–553–6847 or, locally, 703–605–6000.

FOR FURTHER INFORMATION, CONTACT: Mr. Richard Chang, Mail Stop: T–8F5, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone: (301) 415–7188; Internet: *richard.chang@nrc.gov.*

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a rule and has verified this determination with the NRC's Office of the General Counsel.

Dated at Rockville, MD, this 23 day of February, 2009.

For the Nuclear Regulatory Commission.

Keith I. McConnell,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–4331 Filed 2–27–09; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Pendency of Request for Approval of Special Withdrawal Liability Rules; Service Employees International Union Local 1 Pension Trust Fund

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of pendency of request.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') has received a request from the Service Employees International Union Local 1 Pension Trust Fund for approval of a plan amendment providing for special withdrawal liability rules. Under section 4203(f) of the Employee Retirement Income Security Act of 1974 and the PBGC's regulation on Extension of Special Withdrawal Liability Rules, a multiemployer pension plan may, with PBGC approval, be amended to provide for special withdrawal liability rules similar to those that apply to the construction and entertainment industries. Such approval is granted only if the PBGC determines that the plan amendment will be used in an industry with characteristics that would make use of the special rules appropriate and that the plan amendment would not pose a significant risk to the PBGC. This notice advises interested persons of the pendency of this request and invites public comment.

DATES: Comments must be submitted by April 16, 2009.

ADDRESSES: Comments may be mailed to the Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to Suite 340 at the above address. Comments also may be submitted electronically through the PBGC's Web site at *http://reg.comments@pbgc.gov* or by fax to 202–326–4112. Copies of the request for approval and any comments may be obtained by writing to the PBGC's Communications and Public Affairs Department at Suite 1200 at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.) Copies of the PBGC's regulation on Extension of Special Withdrawal Liability Rules (29 CFR part 4203) and of the originating request for approval may be accessed through the PBGC's Web site (*http://www.pbgc.gov*).

FOR FURTHER INFORMATION CONTACT: Eric Field, Attorney, Office of the Chief Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026; telephone 202–326–4020. (TTY and TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4020).

SUPPLEMENTARY INFORMATION:

Background

Under section 4203(a) of ERISA, a complete withdrawal from a multiemployer plan generally occurs when an employer permanently ceases to have an obligation to contribute under the plan or permanently ceases all covered operations under the plan. Under section 4205 of ERISA, a partial withdrawal generally occurs when an employer (1) Reduces its contribution base units by seventy percent in each of three consecutive years, or (2) permanently ceases to have an obligation to contribute under one or more but fewer than all collective bargaining agreements under which the employer has been obligated to contribute under the plan, while either continuing to perform work in the jurisdiction of the collective bargaining agreement of the type for which contributions were previously required or transferring such work to another location or to an entity or entities owned or controlled by the employer, or (3) permanently ceases to have an obligation to contribute under the plan for work performed at one or more but fewer than all of its facilities, while continuing to perform work at the facility of the type for which the obligation to contribute ceased.

Although the general rules on complete and partial withdrawal are based on events that normally result in a diminution of the plan's contribution base, Congress recognized that, in certain industries and under certain circumstances, a complete or partial cessation of the obligation to contribute

does not normally weaken the plan's contribution base. For that reason, Congress established special withdrawal rules for the construction and entertainment industries.

For construction industry plans and employers, section 4203(b)(2) of ERISA provides that a complete withdrawal occurs only if an employer ceases to have an obligation to contribute under a plan, and the employer either continues to perform previously covered work in the jurisdiction of the collective bargaining agreement or resumes such work within five years without renewing the obligation to contribute at the time of resumption. Section 4203(c)(1) of ERISA applies the same special definition of complete withdrawal to the entertainment industry, except that the pertinent jurisdiction is the jurisdiction of the plan rather than the jurisdiction of the collective bargaining agreement. In contrast, the general definition of complete withdrawal in section 4203(a) of ERISA defines a withdrawal to include permanent cessation of the obligation to contribute regardless of the continued activities of the withdrawn employer.

Congress also established special partial withdrawal liability rules for the construction and entertainment industries. Under section 4208(d)(1) of ERISA, ''[a]n employer to whom section 4203(b) (relating to the building and construction industry) applies is liable for a partial withdrawal only if the employer's obligation to contribute under the plan is continued for no more than an insubstantial portion of its work in the craft and area jurisdiction of the collective bargaining agreement of the type for which contributions are required.'' Under section 4208(d)(2) of ERISA, ''[a]n employer to whom section 4203(c) (relating to the entertainment industry) applies shall have no liability for a partial withdrawal except under the conditions and to the extent prescribed by the [PBGC] by regulation.''

Section 4203(f) of ERISA provides that the PBGC may prescribe regulations under which plans in other industries may be amended to provide for special withdrawal liability rules similar to the rules prescribed in section 4203(b) and (c) of ERISA. Section 4203(f)(2) of ERISA provides that such regulations shall permit the use of special withdrawal liability rules only in industries (or portions thereof) in which the PBGC determines that the characteristics that would make use of such rules appropriate are clearly shown, and that the use of such rules would not pose a significant risk to the insurance system under Title IV of ERISA. Section 4208(e)(3) of ERISA provides that the PBGC shall prescribe by regulation a procedure by which plans may be amended to adopt special partial withdrawal liability rules upon a finding by the PBGC that the adoption of such rules is consistent with the purposes of Title IV of ERISA.

The PBGC's regulation, *Extension of Special Withdrawal Liability Rules* (29 CFR part 4203), prescribes procedures whereby a multiemployer plan may ask PBGC to approve a plan amendment that establishes special complete or partial withdrawal liability rules. The regulation may be accessed on the PBGC's Web site (*http://www.pbgc.gov*).

Request

The PBGC has received a request from the Service Employees International Union Local 1 Pension Trust Fund (''Local 1 Plan'') for approval of a plan amendment providing for special withdrawal liability rules. A copy of the originating request, and PBGC's summary of the actuarial reports that the plan provided, may be accessed on the PBGC's Web site (*http://www.pbgc.gov*). A copy of the complete filing may be requested from the PBGC Disclosure Officer. The fax number is 202–326–4042. It may also be obtained by writing the Communications and Public Affairs Department, PBGC, 1200 K Street, NW., Suite 1200, Washington, DC 20005.

In brief, the Local 1 Plan, a multiemployer plan covering the residential building cleaning industry in Chicago, represents that the industry has characteristics similar to those of the construction industry. The plan has adopted an amendment prescribing special withdrawal liability rules, which, if approved by the PBGC, would be effective as of July 1, 2005. Under the proposed amendment, complete withdrawal of an employer would occur only under conditions similar to those described in ERISA section 4203(b)(2), or certain other conditions including a mass withdrawal. Partial withdrawal of an employer would occur only under conditions similar to those described in ERISA section 4208(d)(1). The request includes actuarial data to support the plan's contention that the amendment will not pose a significant risk to the insurance system under Title IV of ERISA.

Comments

All interested persons are invited to submit written comments concerning the pending request to the PBGC at the above address by April 16, 2009. All comments will be made a part of the record. Comments received will be available for public inspection at the address set forth above.

Issued in Washington, DC, on this 17th day of February, 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–4312 Filed 2–27–09; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59435; File No. SR–CBOE–2009–007]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change Relating to Tied Hedge Transactions

February 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2009, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt Interpretation and Policy .10 to Rule 6.74, *Crossing Orders*, to allow hedging stock, security future or futures contract positions to be represented currently with option facilitations or solicitations in the trading crowd (''tied hedge'' orders). The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/Legal*), at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE 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

Rule 6.74 generally sets forth the procedures by which a floor broker may cross an order with a contra-side order. Transactions executed pursuant to Rule 6.74 are subject to the restrictions of paragraph (e) of Rule 6.9, *Solicited Transactions*, which prohibits trading based on knowledge of imminent undisclosed solicited transactions (commonly referred to as ''anticipatory hedging'').

Existing Anticipatory Hedge Rule

By way of background, when Rule 6.9 was adopted in 1994, the Exchange noted its belief that it is appropriate to permit solicitation between potential buyers and sellers of options in advance of the time they send actual orders to the trading crowd on the Exchange. The Exchange also noted that complex orders, such as spreads, straddles, combination and stock-option orders, often require the ''advance shopping'' that is characteristic of a solicited transaction, and that such interactions between buyers and sellers and the resulting solicited transactions can enhance liquidity and depth at the CBOE by bringing orders to the floor that might otherwise be difficult to effect. While recognizing this, Exchange also noted that, if the orders that comprise a solicited transaction are not suitably exposed to the order interaction process on the CBOE floor, the execution of such orders would not be consistent with CBOE rules designed to promote order interaction in an open-outcry auction.[3] Solicited transactions by definition entail negotiation, and if the orders that comprise a solicited transaction are not adequately exposed to the floor auction, the in-crowd market participants (*e.g.*, Market-Makers in the trading crowd) cannot have sufficient time to digest and react to those orders' terms. The pre-negotiation inherent in the solicitation process thus can enable the parties to a solicited transaction to preempt the crowd to an execution at the pre-negotiated price. Thus, the Exchange notes, Rule 6.9 was originally designed to preserve the right to solicit orders in advance of submitting a proposed trade to the crowd, while at the same time assuring that orders that are the subject of a solicitation are exposed to the auction market in a meaningful way. In addition to requiring disclosure of orders and clarifying the priority principles applicable to solicited transactions,[4] Rule 6.9 provides that it is inconsistent with just and equitable principles of trade for any member or associated person, who has knowledge of all the material terms of an original order[5] and a solicited order (including a facilitation order) that matches the original order's price, to enter an order to buy or sell an option of the same class as any option that is the subject of the solicitation prior to the time the original order's terms are disclosed to the crowd or the execution of the solicited transaction can no longer reasonably be considered imminent. This prohibition extends to orders to buy or sell the underlying security or any ''related instrument,'' as that term is defined in the rule.[6]

When originally adopted in 1994, the CBOE believed that the prohibition on anticipatory hedging was necessary to prevent members and associated persons from using undisclosed information about imminent solicited option transactions to trade the relevant option or any closely-related instrument in advance of persons represented in the relevant options crowd. CBOE believes the basic principle remains true today, but changes in the marketplace have caused CBOE to re-evaluate the effectiveness and efficiency of CBOE's existing rule's procedural requirements, as well as CBOE's previous objections to an exception proposed by another exchange for its proposed equivalent rule in 2003.[7] Since that time, the Exchange believes that increased volatility in the markets, as well as the advent of penny trading in underlying stocks and resultant decreased liquidity at the top of each underlying market's displayed national best bid or offer, it has become increasingly difficult for members and member organizations to assess ultimate execution prices and the extent of available stock to hedge related options facilitation/solicitation activities, and to manage that market risk. This risk extends to simple and complex orders, and to all market participants involved in the transaction (whether upstairs or on-floor) because of the uncertainty of the extent to which the market participant will participate in the transaction, the amount of time associated with the auction process, and the likelihood that the underlying stock prices in today's environment may be difficult to assess and change before they are able to hedge. These circumstances make it difficult to obtain a hedge, difficult to quote orders and difficult to achieve executions, and can translate into less liquidity in the form of smaller size and wider quote spreads, fewer opportunities for price improvement, and the inefficient handling of orders. Additionally, more and more trading activity appears to be taking place away from the exchange-listed environment and in the over-the-counter (''OTC'') market, which by its nature is not subject to the same trade-through type risks present in the exchange environment. Therefore, the Exchange is seeking to make its trading rules more efficient not only to address the market risk and execution concerns, but also to effectively compete with and attract volume from the OTC market. What is more, Market-Makers' trading strategies have evolved. Whereas before

[3] For example, Rule 6.43, *Manner of Bidding and Offering*, requires bids and offers to be made at the post by public outcry, and Rule 6.74 imposes specific order exposure requirements on floor brokers seeking to cross buy orders with sell orders.

[4] For example, the rule requires that the member or member organization representing an original order that is the subject of a solicitation to disclose the terms of the original order to the crowd before the original order can be executed. This disclosure is intended to eliminate the unfairness that can be associated with pre-negotiated transactions among the parties to the solicitation versus the in-crowd market participants, and would subject the order that is the subject of the solicitation to full auction interaction with other orders in the crowd. In addition, priority is accorded depending on whether the original order is disclosed throughout the solicitation period; whether the solicited order improves the best bid or offer in the trading crowd; and whether the solicited order matches the original order's limit. Rule 6.74(d) contains exceptions to these priority provisions in instances were a crossing participation entitlement is sought.

[5] An ''original order'' is an order respecting an option traded on the Exchange, including a spread, combination, straddle, stock option, security-future-option or any other complex order. *See* Rule 6.9.

[6] For purposes of Rule 6.9(e), an order to buy or sell a ''related instrument,'' means, ''in reference to an index option, an order to buy or sell securities comprising ten percent or more of the component securities in the index or an order to buy or sell a futures contract on any economically equivalent index. With respect to an SPX option, an OEX option is a related instrument, and vice versa.''

[7] CBOE's proposed exception is similar to an exception that had been proposed in 2003 by the Philadelphia Stock Exchange (''Phlx''). *See* Securities Exchange Act Release No. 48875 (December 4, 2003), 68 FR 70072 (December 16, 2003) (SR–Phlx–2003–75). At the time of the Phlx proposal, which was ultimately not pursued to approval, CBOE commented that the proposal should not be approved unless certain amendments were made. For example, CBOE suggested that the tied hedge procedures should be limited to scenarios where the order cannot be satisfied by the displayed national best bid or offer (''NBBO'') or, for similar reasons, the order is of a significantly larger than average size. *See* letters from Edward J. Joyce, President and Chief Operating Officer, CBOE, to Jonathan G. Katz, Secretary, Commission, dated January 14, 2004 and May 20, 2004; *see also* note 15, *infra*.

Market-Makers tended to trade based on delta risk,[8] now market-making strategy is based more on volatility.[9] The tied hedge transaction procedures (described below) are designed in a way that is consistent with this shift toward a volatility trading strategy, and makes it more desirable for Market-Makers to compete for orders that are exposed through the solicitation process.

In order to address the concerns associated with increased volatility and decreased liquidity and more effectively compete with the OTC market, the Exchange is proposing to adopt a limited exception to the anticipatory hedging restrictions that would permit the representation of hedging stock positions in conjunction with option orders, including complex orders, in the options trading crowd (a ''tied hedge'' transaction). The Exchange believes this limited exception remains in keeping with the original design of Rule 6.9(e), but sets forth a more practicable approach considering today's trading environment that will provide the ability to hedge in a way that will still encourage meaningful competition among upstairs and floor traders. Besides stock positions, the proposal would also permit security futures positions to be used has a hedge. In addition, in the case where the order is for options on indices, options on exchange-traded funds (''ETF'') or options on HOLding Company Depository ReceiptS (''HOLDRS''), a related instrument may be used as a hedge. A ''related instrument'' would mean, in reference to an index option, securities comprising ten percent or more of the component securities in the index or a futures contract on any economically equivalent index applicable to the option order. With respect to SPX, OEX would be an economically equivalent index, and vice versa.[10] A ''related instrument'' would mean, in reference to an ETF or HOLDR option, a futures contract on any economically equivalent index applicable to the ETF or HOLDR underlying the option order.[11]

With a tied hedge transaction, Exchange members would be permitted to first hedge an option order with the underlying security, a security future or futures contract, as applicable, and then forward the option order and the hedging position to an Exchange floor broker with instructions to represent the option order together with the hedging position to the options trading crowd. The in-crowd market participants that chose to participate in the option transaction must also participate in the hedging position. First, under the proposal, the original option order must be in a class designated as eligible for a tied hedge transaction as determined by the Exchange, including FLEX Options classes.[12] The original option order must also be within designated tied hedge eligibility size parameters, which would be determined by the Exchange and would not be smaller than 500 contracts.[13] The Exchange notes that the minimum order size would apply to an individual original order.[14] Multiple original orders could not be aggregated to satisfy the requirement (though multiple contra-side solicited orders could be aggregated to execute against the original order). The Exchange states that the primary purpose of this provision is to limit use of the tied hedge procedures to larger orders that might benefit from a member's or member organization's ability to execute a facilitating hedge.[15] Assuming an option order meets these eligibility parameters, the proposal also includes a number of other conditions that must be satisfied.

Second, the proposal would also require that, prior to entering tied hedge orders on behalf of customers, the member or member organization must deliver to the customer a one-time written notification informing the customer that his order may be executed using the Exchange's tied hedge procedures. Under the proposal, the written notification must disclose the terms and conditions contained in the proposed rule and be in a form approved by the Exchange. Given the minimum size requirement of 500 contracts per order, the Exchange believes that use of the tied hedges procedures will generally consist of orders for the accounts of institutional or sophisticated, high net worth investors. The Exchange therefore believes that a one-time notification delivered by the member or member organization to the customer would be sufficient, and that an order-by-order notification would be unnecessary and overly burdensome.

Third, a member or member organization would be required to create an electronic record that it is engaging in a tied hedge order in a form and manner prescribed by the Exchange. The Exchange states that the purpose of this provision is to create a record to ensure that hedging trades would be appropriately associated with the related options order and appropriately

[8] The price of an option is not completely dependent on supply and demand, nor on the price of the underlying security. Market-Makers price options based on basic measures of risk as well. One of these such measures, delta, is the rate of change in the price of an option as it relates to changes in the price of the underlying security, security future or futures contract. The delta of an option is measured incrementally based on movement in the price of the underlying security, security future or futures contract. For example, if the price of an option increases or decreases by $1.00 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 100. If the price of an option increases or decreases by $0.50 for each $1.00 increase or decrease in the price of the underlying security, the option would have a delta of 50.

[9] Volatility is a measure of the fluctuation in the underlying security's market price. Market-Makers that trade based on volatility have options positions that they hedge with the underlying. Once hedged, the risk exposure to the Market-Maker is realized volatility and implied volatility. Realized volatility is the actual volatility in the underlying. Implied volatility is determined by using option prices currently existing in the market at the time rather than using historical data on the market price changes of the underlying.

[10] The proposed definition of a ''related instrument'' with respect to an index option is modeled after the definition that currently applies under Rule 6.9(e). *See* proposed Rule 6.74.10(c)(i) and note 6, *supra*.

[11] For example, a tied hedge order involving options on the iShares Russell 2000 Index ETF might involve a hedge position in the underlying ETF, security futures overlying the ETF, or futures contracts overlying the Russell 2000 Index.

[12] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[13] The designated classes and minimum order size applicable to each class would be communicated to the membership via Regulatory Circular. For example, the Exchange could determine to make the tied hedge transaction procedures available in options class XYZ for orders of 1,000 contracts or more. Such a determination would be announced via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available.

[14] In determining whether an individual original order satisfies the eligible order size requirement, any complex order must contain one leg alone which is for the eligible order size or greater. This approach to the eligible order size requirement for complex orders is analogous to Rule 6.74(d)(iii), which provides that a complex order must contain one leg alone which is for the eligible order size or greater to be eligible for an open outcry crossing entitlement.

[15] As discussed above in note 7, in commenting on the prior Phlx proposal, CBOE suggested that the tied hedge procedures should be limited to scenarios where the order cannot be satisfied by the NBBO or, for similar reasons, the order is of a significantly larger than average size. CBOE's reasoning was that there may not be as much benefit to delaying the representation and execution of smaller orders that may be immediately fillable or executed more quickly by sending an order to the options crowd (as opposed to tying up such an order with stock). *See* CBOE Letter II at 3–4. Particularly given the decreased amount of liquidity available at the NBBO, the frequency with which quotes may flicker, and differing costs associated with accessing liquidity on various markets, as well as for ease of administration, the Exchange believes that its proposed 500 contract minimum is sufficient to address these considerations. The Exchange intends to evaluate whether 500 contracts is the appropriate threshold and whether smaller sized orders may benefit from the procedures. If any reduction in the eligible size is desired, the Exchange would submit a separate rule filing on this subject in the future.

evaluated in the Exchange's surveillance program. The Exchange believes that this requirement should enable the Exchange to monitor for compliance with the requirements of the proposed rule, as discussed below, by identifying the specific purchase or sell orders relating to the hedging position.

Fourth, the proposed rule would require that members and member organizations that have decided to engage in tied hedge orders for representation in the trading crowd would have to ensure that the hedging position associated with the tied hedge order is comprised of a position that is designated as eligible for a tied hedge transaction. Eligible hedging positions would be determined by the Exchange for each eligible class and may include (i) the same underlying stock applicable to the option order, (ii) a security future overlying the same stock applicable to the option order, or (iii) in reference to an option on an index, ETF or HOLDR, a ''related instrument'' (as described above). For example, for options overlying XYZ stock, the Exchange may determine to designate the underlying XYZ stock or XYZ security futures or both as eligible hedging positions.[16] The Exchange states that the purpose of this provision is to ensure that the hedging position would be for the same stock, equivalent security future or related instrument, as applicable, thus allowing crowd participants who may be considering participation in a tied hedge order to adequately evaluate the risk associated with the option as it relates to the hedge. With stock positions in particular, the Exchange notes that occasionally crowd participants hedge option positions with stock that is related to the option, such as the stock of an issuer in the same industry, but not the actual stock associated with the option. Except as otherwise discussed above for index options, the proposed rule change would not allow such a ''related'' hedging stock position, but would require the hedging stock position to be the actual security underlying the option.

Fifth, the proposal would require that the entire hedging position be brought without undue delay to the trading crowd. In considering whether the hedging position is presented without ''undue delay,'' the Exchange believes that members and member organizations should continue to have the same ability to shop an order in advance of presenting it to the crowd and should be able to enhance that process through obtaining a hedge. The Exchange also believes that, once a hedge is obtained, the order should be brought to the crowd promptly in order to satisfy the ''undue delay'' requirement. In addition, the proposal would require that the hedging position be announced to the trading crowd concurrently with the option order, offered to the crowd in its entirety, and offered at the execution price received by the member or member organization introducing the order to any in-crowd market participant who has established parity or priority for the related options. In-crowd market participants that participate in the option transaction must also participate in the hedging position on a proportionate basis[17] and would not be permitted to prevent the option transaction from occurring by giving a competing bid or offer for one component of the tied hedge order. The Exchange states that the purpose of these requirements is to ensure that the hedging position represented to the crowd would be a good faith effort to provide in-crowd market participants with the same opportunity as the member or member organization introducing the tied hedge order to compete most effectively for the option order.

For example, if a member or member organization introducing a tied stock hedge order were to offer 1,000 XYZ option contracts to the crowd (overlying 100,000 shares of XYZ stock) and concurrently offer only 30,000 of 100,000 shares of the underlying stock that the member obtained as a hedge, crowd participants might only be willing or able to participate in 300 of the option contracts offered if the hedging stock position cannot be obtained at a price as favorable as the stock hedging position offering price, if at all. The Exchange states that the effect of this would be to place the crowd at a disadvantage relative to the introducing member or member organization for the remaining 700 option contracts in the tied stock hedge order, and thus create a disincentive for the crowd to bid or offer competitively for the remaining 700 option contracts. The Exchange believes the requirement that the hedging position be presented concurrently with the option order in the crowd and offered to the crowd in its entirety at the execution price received by the member or member organization introducing the order should ensure that the crowd would be competing on a level playing field with the introducing member or member organization to provide the best price to the customer.

Sixth, the proposal would require that the hedging position not exceed the options order on a delta basis. For example, in the situation where a tied stock hedge order involves the simultaneous purchase of 50,000 shares of XYZ stock and the sale of 500 XYZ call contract (known as a ''buy-write''), and the delta of the option is 100, it would be considered ''hedged'' by 50,000 shares of stock. Accordingly, the proposed rule would not allow the introducing member firm to purchase more than 50,000 shares of stock in the hedging stock position. The Exchange believes that it is reasonable to require that the hedging position be in amounts that do not exceed the equivalent size of the related options order on a delta basis, and not for a greater number of shares. The Exchange believes that the proposed rule change would support its view that the member or member organization introducing the tied hedge order be guided by the notion that any excess hedging activity could be detrimental to the eventual execution price of the option order. Consequently, while delta estimates may vary slightly, the introducing member or member organization would be required to assume hedging positions not to exceed the equivalent size of the options order on a delta basis.[18]

[16] As with designated classes and minimum order size, the eligible hedging positions applicable to each class would be communicated to the membership via Regulatory Circular, which would include a cumulative list of all classes and corresponding sizes for which the tied hedge procedures are available. *See* note 13, *supra*.

[17] For example, if an in-crowd market participant's allocation is 100 contracts out of a 500 contract option order (1/5), the same in-crowd market participant would trade 10,000 shares of a 50,000 stock hedge position tied to that option order (1/5).

[18] The Exchange notes that there may be scenarios were the introducing member purchases (sells) less than the delta, *e.g.*, when there is not enough stock is available to buy (sell) at the desired price. In such scenarios, the introducing member would present the stock that was purchased (sold) and share it with the in-crowd market participants on equal terms. This risk of obtaining less than a delta hedge is a risk that exists under the current rules because of the uncertainty that exists when market participants price an option and have to anticipate the price at which they will be able to obtain a hedge. The proposed tied hedge procedures are designed to help reduce this risk, but the initiating member may still be unable to execute enough stock at the desired price. To the extent the initiating member is able to execute any portion of the hedge, the risk exposure to the initiating member and in-crowd market participants would be diminished because those shares would be ''tied up'' and available for everyone that participates on the resulting tied hedge transaction. The Exchange does not believe that the initiating member would have an unfair advantage by having the ability to pre-facilitate less than a delta hedge because the proposed procedures would require the in-crowd market participants to get a proportional share of the hedge. To the extent more stock is needed to complete a hedge, the initiating member and the in-crowd market participants would have the same risk exposure that they do today.

The Exchange believes that the delta basis requirement, together with the additional conditions that an introducing member or member organization bring the hedging position without undue delay to the trading crowd and announce it concurrently with the option order, offer it to the crowd in its entirety, and offer it at the execution price received by the member or member organization to any in-crowd market participant who has established parity or priority, will help assure that the hedging activity is bona fide and not for speculative or manipulative purposes. Additionally, the Exchange believes these conditions will help assure that there is no adverse effect on the auction market because, as discussed above, in-crowd market participants will have the same opportunity as the member or member organization introducing the tied hedge order to compete for the option order and will share the same benefits of limiting the market risk associated with hedging. The Exchange believes that customers will also benefit if the market risks are limited in the manner proposed. Once an original order is hedged, there is no delta risk. With the delta risk minimized, quotes will likely narrow as market participants (whether upstairs or on-floor) are better able to hedge and compete for orders. For example, Market-Makers could more easily quote markets to trade against a customer's original order based on volatility with the delta risk minimized, which would ultimately present more price improvement opportunities to the original order.[19]

At this time, the Exchange is not proposing any special priority provisions applicable to tied hedge transactions, though it intends to evaluate whether such changes are desired and may submit a separate rule filing on this subject in the future. Under the instant proposal, all tied hedge transactions will be treated as complex orders (regardless of whether the original order was a simple or complex order). Priority will be afforded in accordance with the Exchange's existing open outcry allocation and reporting procedures for complex orders.[20] Any resulting tied hedge transactions will also be subject to the existing NBBO trade-through requirements for options and stock, as applicable. In this regard, the Exchange believes that the resulting option and stock components of the tied hedge transactions may qualify for various NBBO trade through exceptions including, for example, the complex trade exception to the Options Linkage Program[21] and the qualified contingent trade exception to Rule 611(a) of Regulation NMS for the stock component.[22]

The Exchange recognizes that, at the time a tied hedge transaction is executed in a trading crowd, market conditions in any of the non-CBOE market(s) may prevent the execution of the non-options leg(s) at the price(s) agreed upon. For example, the execution price may be outside the non-CBOE market's best bid or offer (''BBO''), *e.g.*, the stock leg is to be executed at a price of $25.03 and the particular stock market's BBO is $24.93–$25.02, and such an execution would normally not be permitted unless an exception applies that permits the trade to be reported outside the BBO. The Exchange notes that the possibility of this scenario occurring exists with complex order executions today and tied hedge transactions would present nothing unique or novel in this regard. In the event the conditions in the non-CBOE market continue to prevent the execution of the non-option leg(s) at the agreed price(s), the trade representing the options leg(s) of the tied hedge transaction may ultimately be cancelled in accordance with CBOE's existing rules.[23]

The following examples illustrate these priority principles:

- *Simple Original Order:* Introducing member receives an original customer order to buy 500 XYZ call options, which has a delta of 100. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the CBOE trading crowd.
- *Complex Original Order:* Introducing member receives an original customer stock-option order to buy 500 XYZ call options and sell 50,000 shares of XYZ stock. The introducing member purchases 50,000 shares of XYZ stock on the NYSE for an average price of $25.03 per share. Once the stock is executed on the NYSE, the introducing

[19] The Exchange also believes that the proposed exception to the anticipatory hedging procedures will assist in the Exchange's competitive efforts to attract order flow from the OTC market, which may result in increased volume on the exchange markets.

[20] Generally, a complex order may be expressed in any increment and executed at a net debit or credit price with another member without giving priority to equivalent bids (offers) in the individual series legs that are represented in the trading crowd or in the public customer options limit order book provided at least one leg of the order betters the corresponding bid (offer) in the public customer options limit order book. For stock-option orders and security future-option orders, this means that the options leg of the order has priority over bids (offers) of the trading crowd but not over bids (offers) in the public customer options limit order book. In addition, for complex orders with non-option leg(s), such as stock-option orders, a bid or offer is made and accepted subject to certain other conditions, including that the options leg(s) may be cancelled at the request of any member that is a party to the transaction if market conditions in any non-CBOE market(s) prevent the execution of the non-options leg(s) at the agreed price(s). *See, e.g.*, CBOE Rules 6.42, *Minimum Increments for Bids and Offers*, 6.45, *Priority of Bids and Offers—Allocation of Trades*, 6.45A(b), *Allocation of Orders Represented in Open Outcry* (for equity options), 6.45B(b), *Allocation of Orders Represented in Open Outcry* (for index options and options on ETFs), 6.48, *Contract Made on Acceptance of Bid or Offer*, and 6.74. Any crossing participation entitlement would also apply to the tied hedge procedures in accordance with Rule 6.74(d).

[21] A ''complex trade'' is defined as: (i) The execution of an order in an option series in conjunction with the execution of one or more related orders in different option series in the same underlying security occurring at or near the same time in a ratio that is equal to or greater than one-to-three (.333) and less than or equal to three-to-one (3.0) and for the purpose of executing a particular investment strategy; or (ii) the execution of a stock option order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock (''convertible security'') coupled with the purchase or sale of option contract(s) on the opposite side of the market representing either (A) the same number of units of the underlying stock or convertible security, or (B) the number of units of the underlying stock or convertible security necessary to create a delta neutral position, but in no case in a ratio greater than 8 option contracts per unit of trading of the underlying stock or convertible security established for that series by the Options Clearing Corporation. *See* paragraph (4) of CBOE Rule 6.80, *Definitions* (applicable to Options Intermarket Linkage), and subparagraph (b)(7) to CBOE Rule 6.83, *Order Protection*.

[22] A ''qualified contingent trade'' is defined as a transaction consisting of two or more component orders, executed as agent or principal, where: (i) At least one component order is in an NMS stock; (ii) all components are effected with a product or price contingency that either has been agreed to by the respective counterparties or arranged for by a broker-dealer as principal or agent; (iii) the execution of one component is contingent upon the execution of all other components at or near the same time; (iv) the specific relationship between the component orders (*e.g.*, the spread between the prices of the component orders) is determined at the time the contingent order is placed; (v) the component orders bear a derivative relationship to one another, represent different classes of shares of the same issuer, or involve the securities of participants in mergers or with intentions to merge that have been announced or since cancelled; and (vi) any trade-throughs caused by the execution of an order involving one or more NMS stocks (each an ''Exempted NMS Stock Transaction) is fully hedged (without regard to any prior existing position) as a result of the other components of the contingent trade. *See* Securities Exchange Act Release No. 57620 (April 4, 2008), 73 FR 19271 (April 9, 2008).

[23] *See* paragraph (b) to CBOE Rule 6.48. The Exchange notes that, in the event of a cancellation, members may be exposed to the risk associated with holding the hedge position. The Exchange intends to address this point in a circular to members should the Exchange receive approval of this proposal.

member, without undue delay, announces the 500 contract option order and 50,000 share tied stock hedge at $25.03 per share to the trading crowd.

In either the simple or complex order scenario, the next steps are the same and are no different from the procedures currently used to execute a complex order on CBOE in open outcry.

- The in-crowd market participants would have an opportunity to provide competing quotes for the tied hedge package (and not for the individual component legs of the package). For example, assume the best net price is $24.53 (equal to $0.50 for each option contract and $25.03 for each corresponding share of hedging stock).
- The option order and hedging stock would be allocated among the in-crowd market participants that established priority or parity at that price, including the initiating member, in accordance with the allocation algorithm applicable to the options class, with the options leg being executed and reported on the CBOE and the stock leg being executed and reported on the stock market specified by the initiating member. For example, the introducing member might trade 40% pursuant to an open outcry crossing entitlement (200 options contracts and 20,000 shares of stock) and the remaining balance might be with three different Market-Makers that each participated on 20% of the order (100 options contracts and 10,000 shares of stock per Market-Maker).
- The resultant tied hedge transaction: (i) Would qualify as a ''complex trade'' under the Options Intermarket Linkage and the execution of the 500 option contracts with the market participants would not be subject to the NBBO for the particular option series; and (ii) would qualify as a ''qualified contingent trade'' under Regulation NMS and the execution of the 30,000 shares of stock (the original 50,000 shares less the initiating member's 20,000 portion) with the market participants would not be subject to the NBBO for the underlying XYZ stock.
- The execution of the options leg would have to satisfy CBOE's intra-market priority rules for complex orders (including that the execution price may not be outside the CBOE BBO). Thus, if the CBOE BBO for the series was $0.40–$0.55, the execution could take place at or inside that price range (*e.g.*, at the quoted price of $0.50) and could not take place outside that price range (*e.g.*, not at $0.56).
- Similarly, the execution of the stock at $25.03 per share would have to satisfy the intra-market priority rules of the non-CBOE market(s) where the stock is to be executed (including that the execution price may not be outside that market's BBO) or, alternatively, qualify for an exception that permits the trade to be reported outside the non-CBOE market(s)' BBO.
- If market conditions in the non-CBOE market(s) prevent the execution of the stock leg(s) at the price(s) agreed upon from occurring (*e.g.*, the BBO remains at $24.93–$25.02), then the options leg(s) could be cancelled at the request of any member that is a party to that trade.[24]

While the particular circumstances surrounding each transaction on the Exchange's trading floor are different, the Exchange does not believe, as a general proposition, that the tied hedge procedures would be inherently harmful or detrimental to customers or have an adverse effect on the auction market. Rather, the Exchange believes the procedures will improve the opportunities for an order to be exposed to a competitive auction and represent an improvement over the current rules. The fact that the parties to such a trade end up fully hedged may contribute to the best execution of the orders,[25] and, in any event, participants continue to be governed by, among other things, their best execution responsibilities. The Exchange also believes that the proposed tied hedge procedures are fully consistent with the original design of Rule 6.9 which, as discussed above, was to eliminate the unfairness that can be associated with a solicited transaction and encourage meaningful competition. The tied hedge procedures will keep in-crowd market participants on equal footing with solicited parties in a manner that minimizes all parties' market risk while continuing to assure that orders are exposed in a meaningful way.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[26] in general, and furthers the objectives of Section 6(b)(5) of the Act,[27] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, by establishing rules governing tied hedge orders, which include specific requirements and procedures to be followed. Specifically, the Exchange believes the procedures will improve the opportunities for an order to be exposed to price improvement in a manner that will encourage a fair, competitive auction process and minimize all parties' market risk.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition 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 Exchange 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:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–CBOE–2009–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary,

[24] *Id.*

[25] As market participants are better able to hedge risk associated with completing these transactions, the Exchange believes that quotes may narrow and result in increased price improvement opportunities.

[26] 15 U.S.C. 78f(b).

[27] 15 U.S.C. 78f(b)(5).

Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–007. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2009–007 and should be submitted on or before March 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4287 Filed 2–27–09; 8:45 am]

BILLING CODE 8011–01–P

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59432; File No. SR–FINRA–2009–005]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update Rule Cross-References and Make Other Various Non-Substantive Technical Changes to FINRA Rules

February 23, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 13, 2009, 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'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to update rule cross-references and make other non-substantive technical changes to certain FINRA rules that have been adopted in the consolidated FINRA rulebook.

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is in the process of developing a new consolidated rulebook (''Consolidated FINRA Rulebook'').[4] That process involves FINRA submitting to the Commission for approval a series of proposed rule changes over time to adopt rules in the Consolidated FINRA Rulebook. The phased adoption and implementation of those rules necessitates periodic amendments to update rule cross-references and other non-substantive technical changes in the Consolidated FINRA Rulebook.

The proposed rule change would update rule cross-references in FINRA Rules 2360, 2370, 6181, 6635, 9217 and 9610 that are needed as the result of Commission approval of three recent FINRA proposed rule changes.[5] In addition, the proposed rule change would amend FINRA Rule 7410(m) to update cross-references to NYSE Rule 80A, which was renumbered as NYSE Rule 132B.[6] Finally, the proposed rule change would amend FINRA Rule 5130 to reflect a change in FINRA style convention when referencing SEC rules and regulations.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the SEC waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing, such that FINRA could implement the proposed rule change on February 17, 2009, the date on which certain of the previously approved rule changes will also be implemented.[7]

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] The current FINRA rulebook consists of (1) FINRA Rules; (2) NASD Rules; and (3) rules incorporated from NYSE (''Incorporated NYSE Rules'') (together, the NASD Rules and Incorporated NYSE Rules are referred to as the ''Transitional Rulebook''). While the NASD Rules generally apply to all FINRA members, the Incorporated NYSE Rules apply only to those members of FINRA that are also members of the NYSE (''Dual Members''). The FINRA Rules apply to all FINRA members, unless such rules have a more limited application by their terms. For more information about the rulebook consolidation process, *see* FINRA *Information Notice,* March 12, 2008 (Rulebook Consolidation Process).

[5] *See* Securities Exchange Act Release No. 58643 (September 25, 2008), 73 FR 57174 (October 1, 2008) (Order Approving File Nos. SR–FINRA–2008–021; SR–FINRA–2008–022; SR–FINRA–2008–026; SR–FINRA–2008–028 and SR–FINRA–2008–029); Securities Exchange Act Release No. 58661 (September 26, 2008), 73 FR 57395 (October 2, 2008) (Order Approving File No. SR–FINRA–2008–030); Securities Exchange Act Release No. 58932 (November 12, 2008), 73 FR 69696 (November 19, 2008) (Order Approving File No. SR–FINRA–2008–032).

[6] *See* Securities Exchange Act Release No. 56726 (October 31, 2007), 72 FR 62719 (November 6, 2007) (Notice of Filing and Immediate Effectiveness of File No. SR–NYSE–2007–96).

[7] *See* FINRA *Regulatory Notice* 08–78 (December 2008) (FINRA Announces SEC Approval and Effective Date for New Consolidated FINRA Rules Relating to Warrants, Options and Security Futures).

[8] 15 U.S.C. 78*o*–3(b)(6).

prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes the proposed rule change will provide greater clarity to members and the public regarding FINRA's rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days after the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10] As required under Rule 19b–4(f)(6)(iii),[11] FINRA provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the filing of the proposed rule change.

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to the 30th day after the date of filing.[12] However, Rule 19b–4(f)(6)(iii) [13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA requested that the Commission waive the 30-day operative delay and designate the proposed rule change to become operative upon filing so that FINRA could implement the proposed rule change on February 17, 2009, the same date on which certain of the previously approved rule changes relating the Consolidated FINRA Rulebook will be implemented. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest. In particular, the Commission does not believe that the proposed rule change presents any novel issues. The proposed rule change makes non-substantive changes to update FINRA rules in the Consolidated FINRA Rulebook to reflect changes to FINRA rules previously published for comment by the Commission. Accordingly, the Commission designates the proposed rule change to be operative upon filing with the Commission.[14]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2009–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2009–005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2009–005 and should be submitted on or before March 23, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–4300 Filed 2–27–09; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] 17 CFR 240.19b–4(f)(6)(iii).

[12] *See id.*

[13] *Id.*

[14] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Amendment to Noise Compatibility Program Mobile Regional Airport, Mobile, AL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the Mobile Airport Authority under the provisions of 49 U.S.C. (the Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and 14 CFR Part 150. These findings are made in recognition of the description of Federal and non-Federal responsibilities in Senate Report No. 96–52 (1980). On May 1, 2006, the FAA determined that the noise exposure maps submitted by the Mobile Airport Authority under Part 150 were in compliance with applicable requirements. On October 26, 2006, the FAA approved the Mobile Regional Airport noise compatibility program.

Most of the recommendations of the program were approved. On August 29, 2008, the Mobile Airport Authority requested approval to revise two of the ten approved proposed action measures.

EFFECTIVE DATE: The effective date of the FAA's approval of the Mobile Regional Airport Noise Compatibility Program Update is February 18, 2009.

FOR FURTHER INFORMATION CONTACT: Kevin Morgan, Federal Aviation Administration, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, Mississippi 39208–2307, phone number: (601) 664–9891. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program Update for Mobile Regional Airport, effective February 18, 2009.

Under Section 47504 of the Act, an airport operator who has previously submitted a Noise Exposure Map may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing non-compatible land uses and prevention of additional non-compatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Title 14 Code of Federal Regulations (CFR) Part 150 is a local program, not a Federal Program. The FAA does not substitute its judgment for that of the airport operator with respect to which measure should be recommended for action. The FAA's approval or disapproval of 14 CFR Part 150 program recommendations is measured according to the standards expressed in 14 CFR Part 150 and the Act, and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the provisions and procedures of 14 CFR Part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing non-compatible land uses around the airport and preventing the introduction of additional non-compatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport Noise Compatibility Program are delineated in 14 CFR Part 150, Section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, State, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where Federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Jackson, Mississippi.

Mobile Airport Authority submitted to the FAA on December 30, 2005, the Noise Exposure Maps, descriptions, and other documentation produced during the noise compatibility planning study conducted from 2003, through December 2005. The Mobile Regional Airport Noise Exposure Maps were determined by FAA to be in compliance with applicable requirements on May 1, 2006. Notice of this determination was published in the **Federal Register** on May 18, 2006.

The Mobile Regional Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the 2006 to 2011 and beyond. It was requested that FAA evaluate and approve an amendment to this material as a Noise Compatibility Program as described in Section 47504 of the Act.

The FAA began its review of the updated Program on August 29, 2008, and was required by a provision of the Act to approve or disapprove the program within 180-days (other than the use of new or modified flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted amended program contained two (2) revised proposed actions for noise mitigation off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and 14 CFR Part 150 have been satisfied. The updated program, therefore, was approved by the FAA effective February 18, 2009.

Outright approval was granted for both of the revised specific program elements.

These determinations are set forth in detail in a Record of Approval Amendment signed by the FAA on February 18, 2009. The Record of Approval Amendment, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative office of the Mobile Airport Authority. The Record of Approval Amendment also will be available on-line at: *http://www.faa.gov/airports_airtraffic/airports/environmental/airport_noise/part_150/states/*.

Issued in Jackson, Mississippi on February 23, 2009.

Rans Black,

Manager, Jackson Airports District Office, Southern Region.

[FR Doc. E9–4349 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Seventh Meeting, Special Committee 214: Standards for Air Traffic Data Communication Services, Working Group 78 (WG–78)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Special Committee 214, Standards for Air Traffic Data Communication Services.

DATES: The meeting will be held March 30–April 3 from 9 a.m.–5 p.m.

ADDRESSES: The meeting will be held at General Dynamics, 8201 East McDowell Rd., Scottsdale, AZ 85257, USA.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is

hereby given for a Special Committee 214 meeting. The agenda will include:

Meeting Objectives

- Approve the first draft of the SPR according to the plenary 7 review criteria.
- Approve the first draft of the ATN and FANS Interop document according to the plenary 7 criteria.
- Review and update the work plan as required.

Day 1

- Opening Plenary (Welcome/Introductions/Administrative Remarks).
- Approval of the Agenda.
- Approval of the Minutes of Plenary 6.
- Review of the work so far:
- SC–214/WG–78 Work Plan and TORs.
- SC–206/WG–76 Coordination.
- SC–186 /WG–51 Coordination.
- Overview of the comments received and review of the comments categorization.
- Mandatory, Desirable, Not required categories to be used.

Days 2, 3 and 4

Morning & Afternoon: Comment Resolution Working Sessions

- Subgroups will be defined according to the received comments. At least the following three groups will be required:
- General/Process Comments Resolution.
- SPR Comments Resolution.
- Interop Comments Resolution.

Day 5:

- Review of the resolutions proposed by the subgroups.
- Document Approvals.
- Review Committee Plan—Master Schedule.
- Closing Plenary (Review Dates, Location and Agenda for Next Meeting, Other Business.)

ADDITIONAL INFORMATION: All the documents to be reviewed can be found at the Web site *http:www.faa.gov/go/SC214* under the Plenary 7 folder.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on February 24, 2009.

Francisco Estrada C.,

RTCA Advisory Committee.

[FR Doc. E9–4354 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–09]

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 March 23, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0047 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 Laverne Brunache (202) 167–3133, 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 February 24, 2009.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2009–0047.

Petitioner: NetJets International Inc.

Section of 14 CFR Affected: 14 CFR 135.225(a)(2).

Description of Relief Sought: NetJets International Inc. (NJI), seeks an exemption from § 135.225(a)(2) which would allow its FAA approved type designed Enhanced Flight Vision System equipped NJI aircraft and a properly trained eligible on demand flight crew to begin an instrument approach procedure at an airport when weather conditions are reported to be below authorized instrument flight rule landing minimums.

[FR Doc. E9–4339 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Midway Airport, Chicago, Illinois

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The Federal Aviation Administration (FAA) proposes to rule and invite comment on the release of land at Chicago Midway International Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Act for the 21st Century (AIR21).

DATES: Comments must be received on or before April 1, 2009.

ADDRESSES: Documents reflecting this FAA action may be reviewed at 2300 East Devon Avenue, Des Plaines, Illinois, or at City of Chicago Department of Aviation, 10610 Zemke Road, Chicago, Illinois.

FOR FURTHER INFORMATION CONTACT: James G. Keefer, Manager, Chicago Airports District Office, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois, 60018. Telephone Number 847–294–7336/FAX Number 847–294–7046.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at Chicago Midway International Airport under the provisions of AIR 21. The following is a brief overview of the request:

The City of Chicago, the owner of Chicago Midway International Airport, requests the release of certain parcels of land from airport property for the following purposes: (1) To enable the exchange of certain city-owned airport land for other City-owned non-airport land contiguous to airport property; (2) to reflect the relocation of certain public roadways for airport development; and (3) to release certain city-owned airport land that is no longer used or needed for airport purposes. Neither the use nor the ownership of the property will change as a result of this request. The requested release will bring the airport Exhibit A map into conformance with its existing land use.

The City of Chicago Department of Aviation has requested to release to the City of Chicago Department of Transportation, for use by the Chicago Transit Authority approximately 2.02 acres of city-owned airport land, located south of vacated West 59th Street, north of relocated West 59th Street and east of the airport's southern entrance roads, in exchange for approximately 2.18 acres of City-owned non-airport land, located north of vacated West 59th Street, east of the airport terminal and west of the Chicago Transit Authority's Orange Line train station, will be added to the airport. The City also requests the release of airport land used for relocated public roadways consisting of approximately 6.77 acres.

The relocated public roadways include portions of South Cicero Avenue between West 53rd Street and West 61st Street and portions of West 59th Street between the Beltline Railroad and South Cicero Avenue. The airport has received approximately 15.53 acres from the vacation of former public roadways, including the roadways that were relocated. The City wants to release Parcel 10 and easements for Parcels 1 and 4. The parcel and easements, originally acquired for airport navigational aid purposes are no longer needed. Parcel 10, consisting of approximately 0.18 acres, was acquired with Federal financial assistance in 1958 for navigational aids that were eventually located elsewhere. Parcel 10 is located approximately 1555 feet northwest of the airport, it is beyond the end of the runway safety zone, and it is not needed for any airport purposes. The City will return the fair market value proceeds of Parcel 10 to the Chicago Airport system.

Issued in Des Plaines, Illinois, on February 17, 2009.

James G. Keefer,

Manager, Chicago Airports District Office.

[FR Doc. E9–4350 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Final Federal Agency Actions on Proposed Highway in North Carolina

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; correction.

SUMMARY: This notice corrects an error in the FHWA notice published on February 17, 2009, at 74 FR 7535. The notice announced that actions taken by the United States Army Corps of Engineers (USACE) and other Federal agencies were final within the meaning of 23 U.S.C. 139(I)(1). The actions related to a proposed highway project, the Triangle Parkway, which begins at NC 540 in Wake County and ends at I–40 in Durham County, North Carolina. The Triangle Parkway is also known as State Transportation Improvement Program Project U–4763B. Those actions granted licenses, permits, and approvals for the project.

FOR FURTHER INFORMATION CONTACT: Mr. George Hoops, P.E., Major Projects Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina, 27601–1418, Telephone: (919) 747–7022; e-mail: *george.hoops@fhwa.dot.gov*. (Regular business hours are 8 a.m. to 5 p.m.). Ms. Jennifer Harris, P.E., Staff Engineer, North Carolina Turnpike Authority, 5400 Glenwood Avenue, Suite 400, Raleigh, North Carolina, 27612, Telephone: (919) 571–3004; e-mail: *jennifer.harris@ncturnpike.org*. (Regular business hours are 8 a.m. to 5 p.m.). Mr. Eric Alsmeyer, Project Manager, U.S. Army Corps of Engineers, Raleigh Regulatory Field Office, 3331 Heritage Trade Drive, Suite 105, Wake Forest, North Carolina, 27587, Telephone: (919) 554–4884, extension 23; e-mail: *Eric.C.Alsmeyer@usace.army.mil* (Regular business hours are 8 a.m. to 5 p.m.).

SUPPLEMENTARY INFORMATION: On February 17, 2009, at 74 FR 7535, the FHWA issued a notice announcing that the USACE had taken final action within the meaning of 23 U.S.C. 139(I)(1) by issuing permits and approvals for the Triangle Parkway, a 3.4-mile long, multi-lane, fully access-controlled, new location roadway. The **SUPPLEMENTARY INFORMATION** section of that notice listed an incorrect Department of the Army Permit Number. The purpose of this notice is to correct the Department of the Army Permit Number. The correct Department of the Army Permit Number is 200620445.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(I)(1).

Issued on: February 20, 2009.

George Hoops,

Major Projects Engineer, Federal Highway Administration, Raleigh, North Carolina.

[FR Doc. E9–4269 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0133; Notice 2]

Hyundai Motor Company, Grant of Petition for Decision of Inconsequential Noncompliance

Hyundai Motor Company (Hyundai), has determined that certain replacement seat belt assemblies sold for various model and model year Hyundai vehicles, including 2008 model year vehicles, did not fully comply with paragraphs S4.1(k) and S4.1(l) of 49 CFR 571.209 Federal Motor Vehicle Safety Standards (FMVSS) No. 209 *Seat Belt Assemblies*. Hyundai has filed an appropriate report pursuant to 49 CFR Part 573, *Defect and Noncompliance Responsibility and Reports*.

Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR Part 556, Hyundai has petitioned for an

exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety. Notice of receipt of the petition was published, with a 30-day public comment period, on August 20, 2008 in the **Federal Register** (73 FR 49238). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) Web site at: *http://www.regulations.gov/*. Then follow the online search instructions to locate docket number ''NHTSA–2008–0133.''

For further information on this decision, contact Ms. Claudia Covell, Office of Vehicle Safety Compliance, the National Highway Traffic Safety Administration (NHTSA), telephone (202) 366–5293, facsimile (202) 366–7002.

Affected are an unknown number of replacement seat belt assemblies sold for various model and model year Hyundai vehicles prior to May 9, 2008.

Paragraphs S4.1(k) and S4.1(l) of FMVSS No. 209 require:

(k) Installation instructions. A seat belt assembly, other than a seat belt assembly installed in a motor vehicle by an automobile manufacturer, shall be accompanied by an instruction sheet providing sufficient information for installing the assembly in a motor vehicle. The installation instructions shall state whether the assembly is for universal installation or for installation only in specifically stated motor vehicles, and shall include at least those items specified in SAE Recommended Practice J800c, ''Motor Vehicle Seat Belt Installations,'' November 1973. If the assembly is for use only in specifically stated motor vehicles, the assembly shall either be permanently and legibly marked or labeled with the following statement, or the instruction sheet shall include the following statement:

This seat belt assembly is for use only in [insert specific seating position(s), e.g., ''front right''] in [insert specific vehicle make(s) and model(s)].

(l) Usage and maintenance instructions. A seat belt assembly or retractor shall be accompanied by written instructions for the proper use of the assembly, stressing particularly the importance of wearing the assembly snugly and properly located on the body, and on the maintenance of the assembly and periodic inspection of all components. The instructions shall show the proper manner of threading webbing in the hardware of seat belt assemblies in which the webbing is not permanently fastened. Instructions for a nonlocking retractor shall include a caution that the webbing must be fully extended from the retractor during use of the seat belt assembly unless the retractor is attached to the free end of webbing which is not subjected to any tension during restraint of an occupant by the assembly. Instructions for Type 2a shoulder belt shall include a warning that the shoulder belt is not to be used without a lap belt.

Hyundai explains that the subject replacement seat belt assemblies were sold without the installation, usage, and maintenance instructions required by paragraphs S4.1(k) and S4.1(1) of FMVSS 209.

Hyundai makes the argument that the replacement seat belt assemblies in question are only made available to Hyundai authorized dealerships for their use or subsequent resale and that the Hyundai parts ordering process used by its dealers clearly identifies the correct replacement part required by model year, model, and seating position. Furthermore, Hyundai states that its replacement seat belt assemblies are designed to be installed properly only in their intended application.

Hyundai additionally states that technicians at Hyundai dealerships that replace seat belts have access to the installation instruction information available in Hyundai Shop Manuals. Installers other than Hyundai dealership technicians also have seat belt installation information available because Hyundai Shop Manual information, including seat belt replacement information, is made available to the general public on the Hyundai Service Web site (*http://www.hmaservice.com*) which provides free access to every Hyundai Shop Manual, including information about seat belt installation.

Hyundai additionally argues that a significant portion of paragraph S4.1(k) appears to address a concern with proper installation of aftermarket seat belts into vehicles that were not originally equipped with these restraints. Hyundai also notes that SAE J800c, which is cited in the regulation, involves installation of ''universal type seat belt assemblies,'' particularly where no seat belt had previously been installed, and that these concerns do not apply to replacement seat belts. The vehicles involved in this petition have uniquely designed seat belt components and replacement seat belt assemblies are installed into the identical location from which the original parts were removed.

Hyundai also states that proper seat belt usage instructions are clearly explained in the Owner's Manual that is included with each new vehicle. Information concerning maintenance, periodic inspection for wear and function of the seat belts, as well as for their proper usage is included in the vehicle Owner Manual and this information equally applies to replacement seat belt assemblies.

Hyundai first became aware of the noncompliance when it was contacted by NHTSA in response to a consumer inquiry received by NHTSA.

Hyundai also stated that it has corrected the problem that caused these errors so that they will not be repeated in future production.

In summation, Hyundai states that it believes that because the noncompliances are inconsequential to motor vehicle safety that no corrective action is warranted.

NHTSA Decision

To help ensure proper selection, installation, usage, and maintenance of seat belt assemblies, paragraph S4.1(k) of FMVSS No. 209 requires that installation, usage, and maintenance instructions be provided with seat belt assemblies, other than those installed by an automobile manufacturer.

First, we note that the subject seat belt assemblies are only made available to Hyundai authorized dealerships for their use or subsequent resale. Because the parts ordering process used by Hyundai authorized dealerships clearly identifies the correct service part required by model year, model, and seating position, NHTSA believes that there is little likelihood that an inappropriate seat belt assembly will be provided for a specific seating position within a Hyundai vehicle.

Second, we note that technicians at Hyundai dealerships have access to the seat belt assembly installation instruction information in Hyundai Shop Manuals. In addition, installers other than Hyundai dealership technicians can access the installation instructions on the Hyundai Web sites and through other aftermarket service information compilers. We also believe that Hyundai is correct in stating that the seat belt assemblies are designed to be installed properly only in their intended application. Thus, we conclude that sufficient safeguards are in place to prevent the installation of an improper seat belt assembly.

NHTSA recognizes the importance of having installation instructions available to installers and use and maintenance instructions available to consumers. The risk created by this noncompliance is that someone who purchased an assembly is unable to obtain the necessary installation information resulting in an incorrectly installed seat belt assembly. However, because the seat belt assemblies are designed to be installed properly only in their intended application and the installation information is widely available to the public, it appears that there is little likelihood that installers will not be able to access the installation instructions. Furthermore, we note that

Hyundai has stated that they are not aware of any customer field reports of service seat belt assemblies being incorrectly installed in the subject applications, nor aware of any reports requesting installation instructions. These findings suggest that it is unlikely that seat belts have been improperly installed.

In addition, although 49 CFR Part 571.209 paragraph S4.1(k) requires certain instructions specified in SAE Recommended Practice J800c be included in seat belt replacement instructions, that requirement applies to seat belts intended to be installed in seating positions where seat belts do not already exist. The subject seat belt assemblies are only intended to be used for replacement of original equipment seat belts; therefore, the instructions do not apply to the subject seat belt assemblies.[1]

With respect to seat belt usage and inspection instructions, we note that this information is available in the Owner Handbooks that are included with each new vehicle as well as free of charge on the Hyundai Web sites and apply to the replacement seat belt assemblies installed in these vehicles. Thus, with respect to usage and maintenance instructions, it appears that Hyundai has met the intent of S4.1(l) of FMVSS No. 209 for the subject vehicles using alternate methods for notification.

NHTSA has granted similar petitions for noncompliance with seat belt assembly installation and usage instruction standards. Refer to Ford Motor Company (73 FR 11462, March 3, 2008); Mazda North America Operations (73 FR 11464, March 3, 2008); Ford Motor Company (73 FR 63051, October 22, 2008); Subaru of America, Inc. (65 FR 67471, November 9, 2000); Bombardier Motor Corporation of America, Inc. (65 FR 60238, October 10, 2000); TRW, Inc. (58 FR 7171, February 4, 1993); and Chrysler Corporation, (57 FR 45865, October 5, 1992). In all of these cases, the petitioners demonstrated that the noncompliant seat belt assemblies were properly installed, and due to their respective replacement parts ordering systems, improper replacement seat belt assembly selection and installation would not be likely to occur.

In consideration of the foregoing, NHTSA has decided that Hyundai has met its burden of persuasion that the seatbelt installation and usage instruction noncompliances described are inconsequential to motor vehicle safety. Accordingly, Hyundai's application is granted, and it is exempted from providing the notification of noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120. All products manufactured or sold on and after May 9, 2008, must comply fully with the requirements of FMVSS No. 209.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: February 24, 2009.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E9–4275 Filed 2–27–09; 8:45 am]

BILLING CODE 4910–59–P

[1] *Subaru of America, Inc.; Grant of Application for Decision of Inconsequential Non-Compliance* (65 FR 67472).

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Renewal Without Change; Comment Request; Anti-Money Laundering Programs for Various Financial Institutions

AGENCY: Financial Crimes Enforcement Network, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of our continuing effort to reduce paperwork and respondent burden, we invite comment on a proposed renewal, without change, to information collections found in existing regulations requiring money services businesses, mutual funds, operators of credit card systems, dealers in precious metals, stones, or jewels, and certain insurance companies to develop and implement written anti-money laundering programs reasonably designed to prevent those financial institutions from being used to facilitate money laundering and the financing of terrorist activities. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

DATES: Written comments are welcome and must be received on or before May 1, 2009.

ADDRESSES: Written comments should be submitted to: Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Attention: Anti-Money Laundering Program Comments. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.gov*, again with a caption, in the body of the text, ''Attention: Anti-Money Laundering Program Comments.''

FOR FURTHER INFORMATION CONTACT: Financial Crimes Enforcement Network, Regulatory Policy and Programs Division at (800) 949–2732, option 6.

SUPPLEMENTARY INFORMATION:

Abstract: The Director of the Financial Crimes Enforcement Network is the delegated administrator of the Bank Secrecy Act. The Act authorizes the Director to issue regulations to require all financial institutions defined as such in the Act to maintain or file certain reports or records that have been determined to have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism, and to implement anti-money laundering programs and compliance procedures.[1]

Regulations implementing section 5318(h)(1) of the Act are found in part at 31 CFR 103.125, 103.130, 103.135, 103.137, and 103.140. In general, the regulations require financial institutions, as defined in 31 U.S.C. 5312(a)(2) and 31 CFR 103.11 to establish, document, and maintain anti-money laundering programs as an aid in protecting and securing the U.S. financial system.

1. *Titles:* Anti-money laundering programs for money services businesses (31 CFR 103.125), Anti-money laundering programs for mutual funds (31 CFR 103.130), Anti-money laundering programs for operators of credit card systems (31 CFR 103.135).

Office of Management and Budget Control Number: 1506–0020.

Abstract: Money services businesses, mutual funds, and operators of credit card systems are required to develop and implement written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: There is no change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents: 203,006.

[1] Public Law 91–508, as amended and codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959 and 31 U.S.C. 5311–5332. Language expanding the scope of the Bank Secrecy Act to intelligence or counter-intelligence activities to protect against international terrorism was added by section 358 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001, Public Law No. 107–56.

31 CFR 103.125 = 200,000.
31 CFR 103.130 = 3,000.
31 CFR 103.135 = 6.

Estimated Number of Responses: 203,006.

31 CFR 103.125 = 200,000.
31 CFR 103.130 = 3,000.
31 CFR 103.135 = 6.

Estimated Number of Hours: 203,006. Estimated at one hour per respondent.

31 CFR 103.125 = 200,000.
31 CFR 103.130 = 3,000.
31 CFR 103.135 = 6.

2. *Title:* Anti-money laundering programs for dealers in precious metals, precious stones, or jewels (31 CFR 103.140).

Office of Management and Budget Control Number: 1505–0030.

Abstract: Dealers in precious metals, stones, or jewels are required to establish and maintain written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: There is no change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents = 20,000.

Estimated Number of Responses = 20,000.

Estimated Number of Hours = 20,000.

3. *Title:* Anti-money laundering programs for insurance companies (31 CFR 103.137).

Office of Management and Budget Control Number: 1506–0035.

Abstract: Insurance companies are required to establish and maintain written anti-money laundering programs. A copy of the written program must be maintained for five years.

Current Action: There is no change to existing regulations.

Type of Review: Extension of a currently approved information collection.

Affected Public: Business and other for-profit institutions.

Burden: Estimated Number of Respondents = 1,200.

Estimated Number of Responses = 1,200.

Estimated Number of Hours = 1,200.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: February 19, 2009.

James H. Freis, Jr.,

Director, Financial Crimes Enforcement Network.

[FR Doc. E9–4288 Filed 2–27–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–New (21–4138CF)]

Agency Information Collection: Emergency Submission for OMB (FVEC) Review; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the United States Department of Veterans Affairs (VA), has submitted to the Office of Management and Budget (OMB) the following emergency proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. 3507(j)(1)). The reason for the emergency clearance is to collect information from honorably discharged Filipino veterans' of WWII who served in the Armed Forces of the United States and who may be eligible to receive a one-time payment from Filipino Veterans Equity Compensation Fund (FVEC), which is a part of the President's Stimulus Package. OMB has been requested to act on this emergency clearance request by March 13, 2009.

DATES: Comments must be submitted on or before March 9, 2009.

ADDRESSES: Submit written comments on the collection of information through *http://www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–New (21–4138CF)'' in any correspondence

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–7485, FAX (202) 273–0443 or e-mail *denise.mclamb@.va.gov.* Please refer to ''OMB Control No. 2900–New (21–4138CF).''

SUPPLEMENTARY INFORMATION:

Title: Statement in Support of Claim (Filipino Veterans Equity Compensation Fund), VA Form 21–4138(CF).

OMB Control Number: 2900–New (21–4138CF).

Type of Review: New collection.

Abstract: Veterans who served in the organized military forces of the Government of the Commonwealth of the Philippines, including certain service in the Philippine Scouts or in organized guerrilla forces recognized by the United States Army, while such forces were in the service of the Armed Forces of the United States, are entitled to a one time payment from the Filipino Veterans Equity Compensation Fund. The veteran must be honorably discharged and served before July 1, 1946 to receive the one-time payment. Applicants seeking this one-time payment must complete VA Form 21–4138(CF) to determine eligibility and file their claim on or before February 16, 2010.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,500 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 18,000.

Dated: February 24, 2009.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. E9–4306 Filed 2–27–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
March 2, 2009

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171

Revision of Fee Schedules; Fee Recovery for FY 2009; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AI52

[NRC–2008–0620]

Revision of Fee Schedules; Fee Recovery for FY 2009

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which requires that the NRC recover through fees approximately 90 percent of its budget authority in fiscal year (FY) 2009, less the amounts appropriated from the Nuclear Waste Fund (NWF), amounts appropriated for Waste Incidental to Reprocessing (WIR), and amounts appropriated for generic homeland security activities. Based on the FY 2009 Energy and Water Development Appropriations Bill, reported by the U.S. House of Representatives Appropriations Committee, the NRC's required fee recovery amount for the FY 2009 budget would be approximately $870.6 million. After accounting for billing adjustments, the total amount to be billed as fees would be approximately $864.8 million.

DATES: The comment period expires April 1, 2009. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that the NRC collect the FY 2009 fees by September 30, 2009, requests for extensions of the comment period will not be granted.

ADDRESSES: You may submit comments by any one of the following methods. Please include number RIN 3150–AI52 in the subject line of your comments. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Federal e-Rulemaking Portal: Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2008–0620. Address questions about NRC dockets to Carol Gallagher 301–492–3668; e-mail *Carol.Gallagher@nrc.gov.*

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1677.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1677).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS): Publicly available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

To obtain additional information on the NRC's FY 2009 budget request, commenters and others may review NUREG–1100, Volume 24, ''Performance Budget: Fiscal Year 2009'' (February 2008), which describes the NRC's budget for FY 2009, including the activities to be performed in each program. This document is available on the NRC's public Web site at *http://www.nrc.gov/reading-rm.html.* Note, however, that NUREG–1100, Volume 24, is based on the NRC's FY 2009 budget request to Congress, and that the fees in this rulemaking are based on the NRC appropriation in the H.R. 7324. The allocation of the H.R. 7324 budget to planned activities within each program, and to each fee class and fee-relief activities category, is included in the publicly available work papers supporting this rulemaking.

FOR FURTHER INFORMATION CONTACT: Rebecca I. Erickson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone 301–415–7126, e-mail *Rebecca.Erickson@NRC.gov.*

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended
B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

The NRC is required each year, under OBRA–90 (42 U.S.C. 2214), as amended, to recover approximately 90 percent of its budget authority, less the amounts appropriated from the NWF, amounts appropriated for WIR, and amounts appropriated for generic homeland security activities (non-fee items), through fees to NRC licensees and applicants. The NRC receives 10 percent of its budget authority (less non-fee items) from the general fund each year to pay for the cost of agency activities that do not provide a direct benefit to NRC licensees, such as international assistance and Agreement State activities (as defined under section 274 of the Atomic Energy Act of 1954, as amended).

The NRC assesses two types of fees to meet the requirements of OBRA–90, as amended. First, license and inspection fees, established in 10 CFR part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) recover the NRC's cost of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed include the review of applications for new licenses and the review of renewal applications, the review of license amendment requests, and inspections. Second, annual fees

established in 10 CFR part 171 under the authority of OBRA–90, as amended, recover generic and other regulatory costs not otherwise recovered through 10 CFR part 170 fees.

The NRC is currently operating under a continuing resolution (CR) for FY 2009 (H.R. 2638) that is effective through March 6, 2009. This means that the FY 2009 funds currently available are similar to the NRC's funding in FY 2008. Although the NRC has not received a new appropriation for FY 2009 at the time this proposed fee rule was submitted for publication in the **Federal Register**, the NRC must proceed with this rulemaking to collect the required fee amounts by September 30, 2009. Therefore, the NRC is establishing fees in this rulemaking based on the FY 2009 Energy and Water Development Appropriations Bill (H.R. 7324), reported by the U.S. House of Representatives Appropriations Committee. Although, neither the House nor the Senate Appropriations Committees' bills have been brought to the floor of the chamber for approval, the NRC is proposing to use the House bill since it has a higher NRC Appropriation amount. If the actual Appropriation signed by the President is lower than this bill, the fee amounts in the final rule will be lower than the proposed rule amounts.

If Congress enacts a different version of the NRC budget than that included in H.R. 7324, the fees in the NRC's FY 2009 final fee rule will be adjusted to reflect the enacted budget. Therefore, fees in the FY 2009 final fee rule may differ from the fees in this proposed rule. The NRC will adjust the FY 2009 final fees based on the enacted version of the budget without seeking further public comment.

For example, if Congress enacts legislation that requires the NRC to operate under a CR for the full FY 2009 and appropriates significantly less to the NRC, the fees in the FY 2009 final fee rule will be modified from the fees in this proposed fee rule, to reflect the reductions in budgeted resources. The NRC's total required fee recovery could be reduced by approximately $144 million under a full-year CR, as compared to H.R. 7324, although the NRC's exact fee recovery amount would depend on the specific provisions in such legislation. A given licensee's part 171 annual fees under a full-year CR would be either similar to, or less than, the fees included in this proposed fee rule. Fees in the FY 2009 final fee rule may also change from this proposed fee rule for other reasons, such as changes in the amount expected to be received from part 170 fees in FY 2009. Under a full-year CR, annual fees for some license fee classes may be affected more than other license fee classes, based on which NRC activities are subject to budget reductions. It is possible that some annual fees may increase from this proposed rule under a full-year CR, because the NRC's ten percent fee relief, which is used to reduce all annual fees in this proposed rule (discussed more in Section II.B.1, Application of ''Fee Relief/Surcharge'' of this document), would be reduced. This may occur if a particular license fee class is not subject to budget reductions under a CR, and also receives a smaller annual fee reduction than that included in this proposed fee rule from the NRC's fee relief.

Based on the H.R. 7324, the NRC's required fee recovery amount for the FY 2009 budget is approximately $870.6 million, which is reduced by approximately $5.8 million to account for billing adjustments (*i.e.*, expected unpaid invoices, payments for prior year invoices), resulting in a total of approximately $864.8 million to be billed as fees in FY 2009.

In accordance with OBRA–90, as amended, $27.1 million of the budgeted resources associated with generic homeland security activities are excluded from the NRC's fee base in FY 2009. These funds cover generic activities that support an entire license fee class or classes of licensees such as rulemakings and guidance development. Under the authority of the IOAA, the NRC will continue to bill under part 170 for all licensee-specific homeland security-related services provided, including security inspections and security plan reviews.

The amount of the NRC's required fee collections is set by law, and is, therefore, outside the scope of this rulemaking. In FY 2009, the NRC's total fee recovery amount increases by $91.5 million from FY 2008, mostly in response to increased regulatory and infrastructure support workload for reactor renewal activities, new uranium recovery facility applications, new uranium enrichment facilities, and materials licensing. The FY 2009 budget was allocated to the fee classes that the budgeted activities support. As such, the proposed annual fees for reactor, fuel facility, most uranium recovery, and small materials licensees increases. Another factor affecting the amount of annual fees for each fee class is the estimated collection under part 170, discussed in the Proposed Action section of this document.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 90 percent of its FY 2009 budget authority (under H.R. 7324) less the appropriations for non-fee items. The NRC's total budget authority for FY 2009 would be $1,069.8 million. The non-fee items include $73.3 million appropriated from the NWF, $2 million for WIR activities, and $27.1 million for generic homeland security activities. Based on the 90 percent fee-recovery requirement, the NRC would have to recover approximately $870.6 million in FY 2009 through part 170 licensing and inspection fees and part 171 annual fees. The amount required by law to be recovered through fees for FY 2009 would be $91.5 million more than the amount estimated for recovery in FY 2008, an increase of approximately 12 percent.

The FY 2009 fee recovery amount is reduced by $5.8 million to account for billing adjustments (*i.e.*, for FY 2009 invoices that the NRC estimates will not be paid during the fiscal year, less payments received in FY 2009 for prior year invoices). This leaves approximately $864.8 million to be billed as fees in FY 2009 through part 170 licensing and inspection fees and part 171 annual fees.

Table I summarizes the budget and fee recovery amounts for FY 2009. (Individual values may not sum to totals due to rounding.)

TABLE I—BUDGET AND FEE RECOVERY AMOUNTS FOR FY 2009

[Dollars in millions]

Total Budget Authority	$1,069.8
Less Non-Fee Items	−102.4
Balance	$967.4
Fee Recovery Rate for FY 2009	×90.0%
Total Amount to be Recovered for FY 2009	$870.6
Less Part 171 Billing Adjustments:	
Unpaid FY 2009 Invoices (estimated)	1.9
Less Payments Received in FY 2009 for Prior Year Invoices (estimated)	−7.7
Subtotal	−5.8
Amount to be Recovered Through Parts 170 and 171 Fees	$864.8
Less Estimated Part 170 Fees	−320.2
Part 171 Fee Collections Required	$544.6

The NRC estimates that $320.2 million would be recovered from part 170 fees in FY 2009. This represents an increase of approximately 15 percent as compared to the actual part 170 collections of $277.3 million for FY 2008. The NRC derived the FY 2009 estimate of part 170 fee collections based on the previous four quarters of billing data for each license fee class, with adjustments to account for changes in the NRC's FY 2009 budget, as appropriate. The remaining $544.6 million would be recovered through the part 171 annual fees in FY 2009 which is an increase of approximately 15 percent compared to actual part 171 collections of $472.9 million for FY 2008.

The NRC plans to publish the final fee rule no later than June 2009. The FY 2009 final fee rule will be a ''major rule'' as defined by the Congressional Review Act of 1996 (5 U.S.C. 801–808). Therefore, the NRC's fee schedules for FY 2009 will become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors, part 72 licensees, major fuel cycle facilities, and other licensees with annual fees of $100,000 or more, upon publication of the FY 2009 final rule. For these licensees, payment is due on the effective date of the FY 2009 final rule. Because these licensees are billed quarterly, the payment due is the amount of the total FY 2009 annual fee, less payments made in the first three quarters of the fiscal year.

Materials licensees with annual fees of less than $100,000 are billed annually. Those materials licensees whose license anniversary date during FY 2009 falls before the effective date of the FY 2009 final rule will be billed for the annual fee during the anniversary month of the license at the FY 2008 annual fee rate. Those materials licensees whose license anniversary date falls on or after the effective date of the FY 2009 final rule will be billed for the annual fee at the FY 2009 annual fee rate during the anniversary month of the license, and payment will be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue mailing the proposed fee rule to all licensees, although, as a cost saving measure, in accordance with its FY 1998 announcement, the NRC has discontinued mailing the final fee rule to all licensees. Accordingly, the NRC does not plan to routinely mail the FY 2009 final fee rule or future final fee rules to licensees.

The NRC will send the final rule to any licensee or other person upon specific request. To request a copy, contact the License Fee Team, Division of the Controller, Office of the Chief Financial Officer, at 301–415–7554, or e-mail *fees.resource@nrc.gov.* In addition to publication in the **Federal Register**, the final rule will be available on the Internet at *regulations.gov.*

The NRC is proposing to amend 10 CFR parts 170 and 171 as discussed in Sections II.A and II.B of this document.

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, As Amended

In FY 2009, the NRC is proposing to increase the hourly rate to recover the full cost of activities under part 170, and using this rate to calculate ''flat'' application fees. The NRC is also proposing to revise descriptions of some fee categories.

The NRC is proposing the following changes:

1. Hourly Rate

The NRC's hourly rate is used in assessing full cost fees for specific services provided, as well as flat fees for certain application reviews. The NRC is proposing to change the FY 2009 hourly rate to $257. This rate would be applicable to all activities for which fees are assessed under §§ 170.21 and 170.31. The FY 2009 proposed hourly rate is higher than the hourly rate of $238 in the FY 2008 final fee rule. The increase is primarily due to the higher FY 2009 budget supporting increased regulatory and infrastructure support workload for reactor license renewals and applications from new uranium recovery and enrichment facilities. The hourly rate calculation is described in further detail in the following paragraphs.

The NRC's hourly rate is derived by dividing the sum of recoverable budgeted resources for (1) mission direct program salaries and benefits; (2) mission indirect salaries and benefits and contract activity; and (3) agency management and support and Inspector General (IG), by mission direct full-time equivalent (FTE) hours. The mission direct FTE hours are the product of the mission direct FTE times the hours per direct FTE. The only budgeted resources excluded from the hourly rate are those for mission direct contract activities.

In FY 2009, the NRC is proposing to use 1,371 hours per direct FTE, same as FY 2008, to calculate the hourly fees. The NRC has reviewed data from its time and labor system to determine if the annual direct hours worked per direct FTE estimate requires updating for the FY 2009 fee rule. Based on this review of the most recent data available, the NRC determined that 1,371 hours is the best estimate of direct hours worked annually per direct FTE. This estimate excludes all non-direct activities, such as training, general administration, and leave.

Table II shows the results of the hourly rate calculation methodology. (Individual values may not sum to totals due to rounding.)

TABLE II—FY 2009 HOURLY RATE CALCULATION

Mission Direct Program Salaries & Benefits	$322.0M
Mission Indirect Salaries & Benefits, and Contract Activity	129.2M
Agency Management and Support, and IG	316.5M
Subtotal	$767.7M
Less Offsetting Receipts	−0.1M
Total Budget Included in Hourly Rate	$767.6M
Mission Direct FTEs	2,180
Professional Hourly Rate (Total Budget Included in Hourly Rate divided by Mission Direct FTE Hours)	$257

As shown in Table II, dividing the $767.6 million budgeted amount (rounded) included in the hourly rate by total mission direct FTE hours (2,180 FTE times 1,371 hours) results in an hourly rate of $257. The hourly rate is rounded to the nearest whole dollar.

2. ''Flat'' Application Fee Changes

The NRC is proposing to adjust the current flat application fees in §§ 170.21 and 170.31 to reflect the revised hourly rate of $257. These flat fees are calculated by multiplying the average professional staff hours needed to process the licensing actions by the proposed professional hourly rate for FY 2009.

Biennially, the NRC evaluates historical professional staff hours used to process a new license application for materials users fee categories subject to flat application fees. This is in accordance with the requirements of the Chief Financial Officer's Act. The NRC conducted this biennial review for the FY 2009 fee rule which also included license and amendment applications for import and export licenses.

Evaluation of the historical data in FY 2009 shows that the average number of professional staff hours required to complete licensing actions in the materials program should be increased in some fee categories and decreased in others to more accurately reflect current data for completing these licensing

actions. The average number of professional staff hours needed to complete new licensing actions was last updated for the FY 2007 final fee rule. Thus, the revised average professional staff hours in this fee rule reflect the changes in the NRC licensing review program that have occurred since that time.

The higher hourly rate of $257 is the main reason for the increases in the application fees. Application fees for some fee categories (2.B., 3.G., 3.O., 3.R.1., 4.B., 5.A., 8.A., 9.C., and 10 B. under § 170.31) also increase because of the results of the biennial review, which showed an increase in average time to process these types of license applications. The decrease in fees for 7 fee categories (3.C., 3.H., 3.N., 3.S., 9.A., 9.B., and 10.B. under § 170.31) is due to a decrease in average time to process these types of applications.

The amounts of the materials licensing flat fees are rounded so that the fees would be convenient to the user and the effects of rounding would be *de minimis* (minimal). Fees under $1,000 are rounded to the nearest $10, fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100, and fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing flat fees are applicable for fee categories K.1. through K.5. of § 170.21, and fee categories 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.B. through 9.D., 10.B, 15.A. through 15.R., 16, and 17 of § 170.31. Applications filed on or after the effective date of the FY 2009 final fee rule would be subject to the revised fees in the final rule.

3. Fee Category Changes

The NRC is proposing to revise the fee categories for uranium recovery facilities in § 170.31. The new fee categories will better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned. A more detailed discussion follows in II.B.3.b. 'Uranium Recovery Facilities', below.

In addition, the NRC is proposing to revise the description for two fee categories, 7.A. and 17 in § 170.31. The NRC proposes to amend fee category 7.A., related to medical licenses, to more precisely state which medical devices it covers. Currently, the fee category applies to teletherapy devices. The NRC has historically included gamma stereotactic radiosurgery units (gamma knives) in this category per NUREG 1556, Volume 20, Appendix G. This amendment explicitly provides that fee category 7.A. include gamma knives and other similar beam therapy devices. The fee category 17 for master materials license is being expanded to include non-government entities with multi-site licenses.

The new fee category descriptions do not represent any additions to the types of licenses regulated by NRC. These changes will help clarify the types of licenses covered under specific categories for NRC licensees.

4. Administrative Amendments

In response to a number of questions on specific sub-sections related to fee exemptions for special projects, the NRC is proposing to simplify (170.11 for ease of reading. There is no change to the NRC's fee exemption policy.

In summary, the NRC is proposing to make the following changes to 10 CFR part 170

1. Establish revised professional hourly rate to use in assessing fees for specific services;
2. Revise the license application fees to reflect the proposed FY 2009 hourly rate;
3. Revise some fee categories to better reflect NRC's regulatory effort, and
4. Make certain administrative changes for purposes of clarification.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals and Government Agencies Licensed by the NRC

The FY 2009 proposed annual fees reflect NRC's use of its fee relief to reduce all licensees' annual fees and changes in the number of NRC licensees. This rulemaking also proposes to establish rebaselined annual fees based on the H.R. 7324. The proposed amendments are described as follows:

1. Application of ''Fee-Relief/Surcharge''

The NRC is proposing to use its fee relief to reduce all licensees' annual fees, based on their percent of the budget.

The NRC applies the 10 percent of its budget that is excluded from fee recovery under OBRA–90, as amended (fee relief), to offset the total budget allocated for activities which do not directly benefit current NRC licensees. The budget for these fee-relief activities are totaled, and then reduced by the amount of the NRC's fee relief. Any remaining fee-relief activities budget is allocated to all licensees' annual fees, based on their percent of the budget (*i.e.*, over 80 percent is allocated to power reactors each year).

In FY 2009, the NRC's 10 percent fee relief exceeds the total budget for fee-relief activities by $2.9 million. In FY 2008, the 10 percent fee relief exceeded the total budget by $8.9 million. The excess fee relief in FY 2009 is lower compared with FY 2008 primarily due to higher FY 2009 budget resources for Agreement States support and international activities.

As in FY 2008, the NRC is using the $2.9 million fee relief to reduce all licensees' annual fees, based on their percent of the fee recoverable budget authority. This is consistent with the existing fee methodology, in that the benefits of the NRC's fee relief are allocated to licensees in the same manner as deficit was allocated as surcharge when the NRC did not receive enough fee relief to pay for fee-relief activities. In FY 2009, the power reactors class of licensees will receive approximately 88 percent of the fee relief based on their share of the NRC fee recoverable budget authority.

The FY 2009 budgeted resources for NRC's fee-relief activities are $93.8 million. The NRC's total fee relief in FY 2009 is $96.7 million, leaving $2.9 million in fee relief to be used to reduce all licensees' annual fees. These values are shown in Table III. (Individual values may not sum to totals due to rounding.)

TABLE III—FEE-RELIEF ACTIVITIES

[Dollars in millions]

	FY 2009 budgeted costs
1. Activities not attributable to an existing NRC licensee or class of licensee:	
a. International activities	$17.6
b. Agreement State oversight	11.2

TABLE III—FEE-RELIEF ACTIVITIES—Continued

[Dollars in millions]

	FY 2009 budgeted costs
c. Scholarships and Fellowships	15.0
2. Activities not assessed part 170 licensing and inspection fees or part 171 annual fees based on existing law or Commission policy:	
a. Fee exemption for nonprofit educational institutions	11.5
b. Costs not recovered from small entities under 10 CFR 171.16(c)	3.9
c. Regulatory support to Agreement States	17.5
d. Generic decommissioning/reclamation (not related to the power reactor and spent fuel storage fee classes)	13.7
e. In situ leach rulemaking and unregistered general licensees	3.5
Total fee-relief activities	$93.8
Less 10 percent of NRC's FY 2009 total budget (less non-fee items)	−96.7
Fee Relief to be Allocated to All Licensees' Annual Fees	$−2.9

Table IV shows how the NRC is allocating the $2.9 million in fee relief to each license fee class. As explained previously, the NRC is allocating this fee relief to each license fee class based on the percent of the budget for that fee class compared to the NRC's total budget. The fee relief is used to partially offset the required annual fee recovery from each fee class.

Separately, the NRC has continued to allocate the low-level waste (LLW) surcharge based on the volume of LLW disposal of three classes of licenses, operating reactors, fuel facilities, and materials users. Table IV also shows the allocation of the LLW surcharge activity. Because LLW activities support NRC licensees, the costs of these activities are not offset by the NRC's fee relief. For FY 2009, the total budget allocated for LLW activity is $2.3 million. (Individual values may not sum to totals due to rounding.)

TABLE IV—ALLOCATION OF FEE-RELIEF ACTIVITIES AND LLW SURCHARGE

	LLW surcharge		Fee relief		Total
	Percent	$M	Percent	$M	$M
Operating Power Reactors	54.0	1.2	88	−2.6	−1.3
Spent Fuel Storage/Reactor Decommissioning	.....	.....	2.5	−0.1	−0.1
Test and Research Reactors	.....	.....	0.1	0.0	0.0
Fuel Facilities	15.0	0.3	5.2	−0.2	0.2
Materials Users	31.0	0.7	3.0	−0.1	0.6
Transportation	.....	.....	0.4	0.0	0.0
Uranium Recovery	.....	.....	0.8	0.0	0.0
Total	100.0	2.3	100.0	−2.9	−0.6

In FY 2009, the LLW surcharge exceeded the fee relief for two fee classes, fuel facilities and materials users. The net surcharge will be included in the annual fee for fuel facility and materials users licensees.

2. Agreement State Activities

By letter dated June 12, 2008, Governor Timothy Kaine of the Commonwealth of Virginia requested that the NRC enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended. The final Agreement package is before the Commission for approval and if approved, the Agreement is expected to take effect by March 31, 2009. This will result in the transfer of approximately 380 licenses from the NRC to the Commonwealth of Virginia.

Note that the continuing costs of oversight and regulatory support for the Commonwealth of Virginia, as for any other Agreement State, are recovered as fee-relief activities consistent with existing policy. The budgeted resources for the regulatory support of Agreement State licensees are prorated to the fee-relief activity based on the percent of total licensees in Agreement States. The NRC proposes to update the proration percentage in its fee calculation to make sure that resources are allocated equitably between the NRC materials users fee class and the regulatory support to Agreement States fee-relief category. Accordingly, in anticipation of the Commonwealth of Virginia becoming an Agreement State, the NRC has increased the percentage of materials users regulatory support costs prorated to the fee-relief activity from 82 percent in FY 2008 to 85 percent in FY 2009. The resources for licensing and inspection activities supporting NRC licensees in the materials users fee class are not prorated to the fee-relief activity.

The number of NRC materials users licensees has been updated to reflect the transfer of licensees to the Commonwealth of Virginia. Because of the effective date of March 31, 2009, the approximately 380 licensees transferring to the Commonwealth of Virginia will be subject to one-half of their annual fee for FY 2009. The number of materials users licensees are revised to reflect that the NRC will still collect one-half of the annual fee from these licensees.

This is not a substantive policy change, but rather a calculation change that will result in a more accurate estimate of the actual costs of supporting Agreement State activities. If the Commonwealth of Virginia does not become an Agreement State by the

publication of the final fee rule, the NRC will adjust the calculation of the FY 2009 annual fees based on the latest information available at that time. Any changes will be discussed in the final fee rule.

Also, Governor Jon Corizine of the State of New Jersey has by letter dated October 16, 2008 formally requested that the NRC enter into an Agreement with his state. If approved by the Commission, this Agreement is expected to take effect by September 30, 2009. Approximately 500 NRC licensees will be transferred to the State of New Jersey. Because the expected effective date is September 30, 2009, these licensees will be assessed annual fees by NRC for the full year of FY 2009. Therefore, no changes to the FY 2009 fees or the number of NRC licensees have been made for this potential event.

3. Revised Annual Fees

The NRC is proposing to revise its annual fees in §§ 171.15 and 171.16 for FY 2009 to recover approximately 90 percent of the NRC's FY 2009 budget authority after subtracting the non-fee amounts and the estimated amount to be recovered through part 170 fees. The part 170 estimate for this proposed rule increased by $28.5 million from the FY 2008 fee rule based on the latest invoice data available. The total amount to be recovered through annual fees for FY 2009 is $544.6 million. The required annual fee collection in FY 2008 was $468.9 million.

The Commission has determined (71 FR 30733; May 30, 2006) that the agency should proceed with a presumption in favor of rebaselining when calculating annual fees each year. Under this method, the NRC's budget is analyzed in detail and budgeted resources are allocated to fee classes and categories of licensees. The Commission expects that most years there will be budget and other changes that warrant the use of the rebaselining method.

As compared with FY 2008 annual fees, rebaselined fees are higher for three classes of licensees (power reactors, non-power reactors, and fuel facilities), and lower for two classes of licensees (spent fuel storage/reactor decommissioning and transportation). Within the materials users and uranium recovery fee classes, annual fees for most licensees increase, while annual fees for some licensees decrease.

The NRC's total fee recoverable budget, as mandated by law, is approximately $92 million larger in FY 2009 as compared with FY 2008. Much of this increase is for reactor renewal activities, new uranium recovery facility applications, new uranium enrichment facility applications, and materials licensing. The FY 2009 budget was allocated to the fee classes that the budgeted activities support. As such, the proposed annual fees for operating reactor, non-power reactor, fuel facility, most uranium recovery and small materials licensees increases. Also in FY 2009, generic NRC resources supporting new uranium recovery applications are included in the budget allocated to operating power reactors and fuel facility fee classes because these licensees will potentially benefit from increased production of uranium milled by new uranium recovery facilities. The impact of this allocation on the operating reactors and fuel facilities annual fees is less than one percent.

The factors affecting all annual fees include the distribution of budgeted costs to the different classes of licenses (based on the specific activities NRC will perform in FY 2009), the estimated part 170 collections for the various classes of licenses, and allocation of the fee relief to all fee classes. The percentage of the NRC's budget not subject to fee recovery remained unchanged at 10 percent from FY 2008 to FY 2009.

Table V shows the rebaselined annual fees for FY 2009 for a representative list of categories of licenses. The FY 2008 fee is also shown for comparative purposes.

TABLE V—REBASELINED ANNUAL FEES FOR FY 2009

Class/category of licenses	FY 2008 annual fee	FY 2009 proposed annual fee
Operating Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning Annual Fee)	$4,167,000	$4,735,000
Spent Fuel Storage/Reactor Decommissioning	135,000	127,000
Test and Research Reactors (Non-power Reactors)	76,500	124,500
High Enriched Uranium Fuel Facility	3,007,000	4,721,000
Low Enriched Uranium Fuel Facility	899,000	1,659,000
$UFCO_6$ Conversion Facility	589,000	975,000
Conventional Mills	10,300	32,200
Typical Materials Users:		
Radiographers (Category 3O)	11,100	23,100
Well Loggers (Category 5A)	3,400	9,900
Gauge Users (Category 3P)	2,100	3,800
Broad Scope Medical (Category 7B)	22,900	36,800

The work papers which support this proposed rule show in detail the allocation of NRC's budgeted resources for each class of licenses and how the fees are calculated. The reports included in these work papers summarize the FY 2009 budgeted FTE and contract dollars allocated to each fee class and fee-relief activities category at the planned activity and program level, and compare these allocations to those used to develop final FY 2008 fees. The work papers are available electronically at the NRC's Electronic Reading Room on the Internet at Web site address *http://www.nrc.gov/reading-rm/adams.html.* The work papers may also be examined at the NRC PDR located at One White Flint North, Room O–1F22, 11555 Rockville Pike, Rockville, Maryland.

The budgeted costs allocated to each class of licenses and the calculations of the rebaselined fees are described in paragraphs a. through h. of this Section. Individual values in the Tables presented in this Section may not sum to totals due to rounding.

a. Fuel Facilities

The FY 2009 budgeted cost to be recovered in the annual fees assessment to the fuel facility class of licenses [which includes licensees in fee categories 1.A.(1)(a), 1.A.(1)(b), 1.A.(2)(a), 1.A.(2)(b), 1.A.(2)(c), 1.E., and 2.A.(1), under § 171.16] is approximately $23.1 million. This value is based on the full cost of budgeted resources associated with all activities that support this fee class, which is reduced by estimated part 170

collections and adjusted for allocated generic transportation resources, and fee relief. In FY 2009, the LLW surcharge for fuel facilities exceeds the allocated fee-relief (see Table IV in Section II.B.1., ''Application of ''Fee Relief/Surcharge'' of this document). The summary calculations used to derive this value are presented in Table VI for FY 2009, with FY 2008 values shown for comparison.

TABLE VI—ANNUAL FEE SUMMARY CALCULATIONS FOR FUEL FACILITIES

[Dollars in millions]

Summary fee calculation	FY 2008 final	FY 2009 proposed
Total budgeted resources	$31.5	$44.6
Less estimated part 170 receipts	−17.2	−21.8
Net part 171 resources	14.3	22.8
Allocated generic transportation	+0.5	+0.4
Allocated fee relief/surcharge	−0.1	+0.2
Billing adjustments	−0.8	−0.3
Total required annual fee recovery	13.9	23.1

The increase in FY 2009 total budgeted resources allocated to this fee class compared with FY 2008 is primarily due to increases in resources for new uranium enrichment facility licensing activities partially offset by a higher part 170 revenue estimate.

The total required annual fee recovery amount is allocated to the individual fuel facility licensees based on the effort/fee determination matrix developed for the FY 1999 final fee rule (64 FR 31447; June 10, 1999). In the matrix included in the NRC publicly available work papers, licensees are grouped into categories according to their licensed activities (*i.e.*, nuclear material enrichment, processing operations, and material form) and according to the level, scope, depth of coverage, and rigor of generic regulatory programmatic effort applicable to each category from a safety and safeguards perspective. This methodology can be applied to determine fees for new licensees, current licensees, licensees in unique license situations, and certificate holders.

This methodology is adaptable to changes in the number of licensees or certificate holders, licensed or certified material and/or activities, and total programmatic resources to be recovered through annual fees. When a license or certificate is modified, it may result in a change of category for a particular fuel facility licensee as a result of the methodology used in the fuel facility effort/fee matrix. Consequently, this change may also have an effect on the fees assessed to other fuel facility licensees and certificate holders. For example, if a fuel facility licensee amends its license/certificate (*e.g.*, decommissioning or license termination) that results in it not being subject to part 171 costs applicable to the fee class, then the budgeted costs for the safety and/or safeguards components will be spread among the remaining fuel facility licensees/ certificate holders.

The methodology is applied as follows. First, a fee category is assigned based on the nuclear material and activity authorized by license or certificate. Although a licensee/ certificate holder may elect not to fully use a license/certificate, the license/ certificate is still used as the source for determining authorized nuclear material possession and use/activity. Second, the category and license/certificate information are used to determine where the licensee/certificate holder fits into the matrix. The matrix depicts the categorization of licensees/certificate holders by authorized material types and use/activities.

Each year, the NRC's fuel facility project managers and regulatory analysts determine the level of effort associated with regulating each of these facilities. This is done by assigning, for each fuel facility, separate effort factors for the safety and safeguards activities associated with each type of regulatory activity. The matrix includes ten types of regulatory activities, including enrichment and scrap/waste related activities (see the work papers for the complete list). Effort factors are assigned as follows: One (low regulatory effort), five (moderate regulatory effort), and ten (high regulatory effort). These effort factors are then totaled for each fee category, so that each fee category has a total effort factor for safety activities and a total effort factor for safeguards activities.

The effort factors for the various fuel facility fee categories are summarized in Table VII. The value of the effort factors shown, as well as the percent of the total effort factor for all fuel facilities, reflects the total regulatory effort for each fee category (not per facility). Note that the effort factors for the High Enriched Uranium Fuel (HEU) fee category have decreased from FY 2008. The safety and safeguards factors decreased in FY 2009 to reflect process changes such as HEU downblending and liquid UF_6 workload. Taking into account both of these changes, the total safety and safeguards effort factor change is relatively small.

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
High Enriched Uranium Fuel (1.A.(1)(a))	2	87 (33.3)	97 (51.1)
Uranium Enrichment (1.E)	2	70 (26.8)	40 (21.1)
Low Enriched Uranium Fuel (1.A.(1)(b))	3	71 (27.2)	26 (13.7)
UF_6 Conversion (2.A.(1))	1	12 (4.6)	7 (3.7)
Limited Operations (1.A.(2)(a))	1	12 (4.6)	3 (1.6)

TABLE VII—EFFORT FACTORS FOR FUEL FACILITIES—Continued

Facility type (fee category)	Number of facilities	Effort factors (percent of total)	
		Safety	Safeguards
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	1	3 (1.1)	15 (7.9)
Hot Cell (1.A.(2)(c))	1	6 (2.3)	2 (1.1)

The budgeted resources before the surcharge for safety activities ($13,283,085) are allocated to each fee category based on its percent of the total regulatory effort for safety activities. For example, if the total effort factor for safety activities for all fuel facilities is 100, and the total effort factor for safety activities for a given fee category is 10, that fee category will be allocated 10 percent of the total budgeted resources for safety activities. Similarly, the budgeted resources before the surcharge for safeguards activities ($9,669,679) are allocated to each fee category based on its percent of the total regulatory effort for safeguards activities. The fuel facility fee class' portion of the surcharge ($192,336) is allocated to each fee category based on its percent of the total regulatory effort for both safety and safeguards activities. The annual fee per licensee is then calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category as summarized in Table VIII.

TABLE VIII—ANNUAL FEES FOR FUEL FACILITIES

Facility type (fee category)	FY 2009 annual fee
High Enriched Uranium Fuel (1.A.(1)(a))	$4,721,000
Uranium Enrichment (1.E.)	2,823,000
Low Enriched Uranium (1.A.(1)(b))	1,659,000
UF_6 Conversion (2.A.(1))	975,000
Gas Centrifuge Enrichment Demonstration (1.A.(2)(b))	924,000
Limited Operations Facility (1.A.(2)(a))	770,000
Hot Cell (and others) (1.A.(2)(c))	411,000

The NRC does not expect to authorize operation of any new uranium enrichment facility in FY 2009. The annual fee applicable to any type of new uranium enrichment facility is the annual fee in § 171.16, fee category 1.E., Uranium Enrichment, unless the NRC establishes a new fee category for the facility in a subsequent rulemaking.

b. Uranium Recovery Facilities

The total FY 2009 budgeted cost to be recovered through annual fees assessed to the uranium recovery class [which includes licensees in fee categories 2.A.(2)(a), 2.A.(2)(b), 2.A.(2)(c), 2.A.(2)(d), 2.A.(2)(e), 2.A.(3), 2.A.(4), 2.A.(5) and 18.B., under § 171.16], is approximately $0.52 million. The derivation of this value is shown in Table IX, with FY 2008 values shown for comparison purposes.

TABLE IX—ANNUAL FEE SUMMARY CALCULATIONS FOR URANIUM RECOVERY FACILITIES

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total budgeted resources	$2.56	$6.97
Less estimated part 170 receipts	−2.02	−6.38
Net part 171 resources	$0.54	$0.59
Allocated generic transportation	+N/A	+N/A
Allocated fee relief	−0.03	−0.02
Billing adjustments	−0.06	−0.05
Total required annual fee recovery	0.46	0.52

The increase in the total required annual fee recovery is mainly due to an increase in uranium recovery licensing and inspection resources for the existing licensees. In FY 2009, NRC is proposing to exclude the generic budget resources supporting applications for new uranium recovery facilities from the annual fee charged to current uranium recovery licensees. Instead the budget resources would be allocated to operating reactors and fuel facility licensees since these fee classes would potentially benefit from increased production of the uranium milled by the new facilities. The generic resources supporting the new uranium recovery facilities do not benefit the existing uranium recovery licensees.

Since FY 2002, the NRC has computed the annual fee for the uranium recovery fee class by allocating the total annual fee amount for this fee class, between DOE and the other licensees in this fee class. The NRC regulates DOE's Title I and Title II activities under the Uranium Mill Tailings Radiation Control Act (UMTRCA). The Congress established the two programs, Title I and Title II under UMTRCA, to protect the public and the environment from uranium milling. The UMTRCA Title I program is for remedial action at abandoned mill tailings sites where tailings resulted largely from production of uranium for the weapons program. The NRC also regulates DOE's UMTRCA Title II program which is directed toward uranium mill sites licensed by the NRC or Agreement States in or after 1978.

In FY 2009, 35 percent of the total annual fee amount, less $246,563 specifically budgeted for Title I activities, is allocated to DOE's UMTRCA facilities. The remaining 65 percent of the total annual fee (less the amounts specifically budgeted for Title I activities) is allocated to other licensees. The reduction in resources for licensing the DOE is based on the reduced effort expended for DOE UMTRCA. This is a change from FY

2008 when the distribution of the annual fee was 40 percent to DOE and 60 percent to non-DOE licensees. The change reflects NRC's current level of effort. This change in the distribution of uranium recovery fee class resources between non-DOE uranium recovery facilities and DOE results in a decrease in annual fee for the DOE compared to the increase in annual fee for non-DOE facilities. Of the required annual fee collections, $342,000 (rounded) would be assessed to DOE for licensing its UMTRCA activities as fee category 18.B in § 170.16.

The remaining $176,000 (rounded) would be recovered through annual fees assessed to the other licensees in this fee class (*i.e.*, conventional mills, in-situ recovery (ISR) facilities), 11e.(2) mill tailings disposal facilities (incidental to existing tailings sites), and a uranium water treatment facility. Beginning in FY 2009, NRC is proposing to replace the existing single fee category, 2.A.(2)(b) for uranium ISR facilities with four fee categories based on the type of ISR facilities. The addition of the new fee categories is needed to reflect the diverse types of uranium recovery facilities planned for construction and operation in the near future. Additionally, the new fee categories will better reflect the NRC's regulatory benefit provided to the different types of facilities, both existing and planned.

The revised fee category, 2.A.(2)(b), would be for an ISR yellowcake facility with zero to three satellites. These facilities include a central processing plant (CPP) that includes all the equipment necessary to collect uranium on resin, strip uranium from the resin, and process the uranium into a yellowcake slurry or dried yellowcake powder. These facilities may also receive resins from up to three satellite facilities operated by the same company for further processing of the contained uranium into yellowcake.

The new 2.A.(2)(c) fee category would be for an ISR yellowcake facility with more than three satellites. These facilities have a CPP with the same equipment as the fee category as stated previously, but have four or more satellite facilities, which necessitates a correspondingly greater allocation of the staff's generic resources.

The new 2.A.(2)(d) fee category would be for a stand-alone ISR Resin facility which performs ISR recovery operations and includes equipment for the collection of dissolved uranium from onsite underground ore bodies onto ion exchange resins. The resins are then transported to another company's facility for further processing of the collected uranium into yellowcake.

The new fee category, 2.A.(2)(e), would be for a Resin Toll Milling Facility. These facilities do not conduct any onsite recovery of uranium but consist of a CPP for the purpose of processing resins from other ISR facilities into yellowcake. Allocation of generic resources for these facilities would be less than that allocated for the other categories of ISR facilities.

The annual fee being assessed to DOE includes recovery of the costs specifically budgeted for NRC's Title I activities plus 35 percent of the remaining annual fee amount, including the fee-relief and generic/other costs, for the uranium recovery class. The remaining 65 percent of the fee-relief and generic/other costs are assessed to the other NRC licensees in this fee class that are subject to annual fees. The costs to be recovered through annual fees assessed to the uranium recovery class are shown in Table X.

TABLE X—COSTS RECOVERED THROUGH ANNUAL FEES; URANIUM RECOVERY FEE CLASS

DOE annual fee mount (UMTRCA title I and title II) general licenses:	
UMTRCA Title I budgeted costs	$246,563
35 percent of generic/other uranium recovery budgeted costs	103,269
35 percent of uranium recovery fee-relief	−8,241
Total Annual Fee Amount for DOE (rounded)	342,000
Annual fee amount for other uranium recovery licenses:	
65 percent of generic/other uranium recovery budgeted costs less the amounts specifically budgeted for Title I activities	191,785
65 percent of uranium recovery fee-relief	−15,304
Total Annual Fee Amount for Other Uranium Recovery Licenses	176,481

The NRC will continue to use a matrix (which is included in the supporting work papers) to determine the level of effort associated with conducting the generic regulatory actions for the different (non-DOE) licensees in this fee class. The weights derived in this matrix are used to allocate the approximately $176,000, annual fee amount to these licensees. The use of this uranium recovery annual fee matrix was established in the FY 1995 final fee rule (60 FR 32217; June 20, 1995). The FY 2009 matrix is described as follows.

First, the methodology identifies the categories of licenses included in this fee class (besides DOE). In FY 2009, these categories are conventional uranium mills and heap leach facilities, uranium solution mining and resin ISR facilities mill tailings disposal facilities (11e.(2) disposal facilities), and uranium water treatment facilities.

Second, the matrix identifies the types of operating activities that support and benefit these licensees. In FY 2009, the activities related to generic decommissioning/reclamation are not included in the matrix, because generic decommissioning/reclamation activities are included in the surcharge, and therefore need not be a factor in determining annual fees. The activities included in the FY 2009 matrix are operations, waste operations, and groundwater protection. The relative weight of each type of activity is then determined, based on the regulatory resources associated with each activity. The operations, waste operations, and groundwater protection activities have weights of 0, 5, and 10, respectively, in the FY 2009 matrix.

Each year, the NRC determines the level of benefit to each licensee for generic uranium recovery program activities for each type of generic activity in the matrix. This is done by assigning, for each fee category, separate benefit factors for each type of regulatory activity in the matrix. Benefit factors are assigned on a scale of 0 to 10 as follows: zero (no regulatory benefit), five (moderate regulatory benefit), and ten (high regulatory benefit). These benefit factors are first multiplied by the relative weight assigned to each activity (described previously). Total benefit factors by fee category, and per licensee in each fee category, are then calculated. These benefit factors thus reflect the relative regulatory benefit associated with each licensee and fee category.

The benefit factors per licensee and per fee category, for each of the non-DOE fee categories included in the uranium recovery fee class, are as follows:

TABLE XI—BENEFIT FACTORS FOR URANIUM RECOVERY LICENSES

Fee category	Number of licensees	Benefit factor per licensee	Total value	Benefit factor percent total
Conventional and Heap Leach mills	1	200	200	18
Basic In Situ Recovery facilities	3	190	570	52
Expanded In Situ Recovery facilities	1	215	215	20
11e.(2) disposal incidental to existing tailings sites	1	65	65	6
Uranium water treatment	1	45	45	4

The annual fee per licensee is calculated by dividing the total allocated budgeted resources for the fee category by the number of licensees in that fee category as summarized in Table XII. Applying these factors to the approximately $176,000 in budgeted costs to be recovered from non-DOE uranium recovery licensees results in the following annual fees for FY 2009:

TABLE XII—ANNUAL FEES FOR URANIUM RECOVERY LICENSEES (OTHER THAN DOE)

Facility type (fee category)	FY 2009 annual fee
Conventional and Heap Leach mills (2.A.(2)(a))	$32,200
Basic In Situ Recovery facilities (2.A.(2)(b))	30,600
Expanded In Situ Recovery facilities (2.A.(2)(c))	34,700
11e.(2) disposal incidental to existing tailings sites (2.A.(4))	10,500
Uranium water treatment (2.A.(5))	7,300

c. Operating Power Reactors

The $479.2 million in budgeted costs to be recovered through FY 2009 annual fees assessed to the power reactor class was calculated as shown in Table XIII. FY 2008 values are shown for comparison.

TABLE XIII—ANNUAL FEE SUMMARY CALCULATIONS FOR OPERATING POWER REACTORS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total budgeted resources	$698.8	$761.4
Less estimated part 170 receipts	−258.1	−276.6
Net part 171 resources	$440.7	$484.8
Allocated generic transportation	+ 1.0	+ 0.8
Allocated fee relief	−5.9	−1.3
Billing adjustments	−16.5	−5.1
Total required annual fee recovery	419.3	479.2

The budgeted costs to be recovered through annual fees to power reactors are divided equally among the 104 power reactors licensed to operate. This results in a FY 2009 annual fee of $4,608,000 per reactor. Additionally, each power reactor licensed to operate would be assessed the FY 2009 spent fuel storage/reactor decommissioning annual fee of $127,000. This results in a total FY 2009 annual fee of $4,735,000 for each power reactor licensed to operate.

The annual fee for power reactors increases in FY 2009 compared to FY 2008 primarily due to an increase in budgeted resources for licensing renewal activities and other licensing tasks. This increase is partially offset by the higher estimated part 170 collections and fee-relief adjustment. In FY 2009, the NRC estimates an increase in part 170 collections of about 7 percent for this fee class. These collections offset the required annual fee recovery amount by a total of approximately $276.6 million. The amended annual fees for power reactors are presented in § 171.15.

d. Spent Fuel Storage/Reactor Decommissioning

For FY 2009, budgeted costs of approximately $15.6 million for spent fuel storage/reactor decommissioning are to be recovered through annual fees assessed to part 50 power reactors, and to part 72 licensees who do not hold a part 50 license. Those reactor licensees that have ceased operations and have no fuel onsite are not subject to these annual fees. Table XIV shows the calculation of this annual fee amount. FY 2008 values are shown for comparison.

TABLE XIV—ANNUAL FEE SUMMARY CALCULATIONS FOR THE SPENT FUEL STORAGE/REACTOR DECOMMISSIONING FEE CLASS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total budgeted resources	$22.4	$21.1
Less estimated part 170 receipts	−5.3	−5.5
Net part 171 resources	$17.1	$15.6
Allocated generic transportation	+ 0.2	+ 0.2
Allocated fee relief	−0.3	−0.1
Billing adjustments	+ 0.5	−0.1
Total required annual fee recovery	16.6	15.6

The required annual fee recovery amount is divided equally among 123 licensees, resulting in a FY 2009 annual fee of $127,000 per licensee. The value of total budgeted resources for this fee class decreases in FY 2009 compared to FY 2008 due to a decrease in the budgeted resources for decommissioning and the fee-relief adjustment.

e. Test and Research Reactors (Non-power Reactors)

Approximately $500,000 in budgeted costs is to be recovered through annual fees assessed to the test and research reactor class of licenses for FY 2009. Table XV summarizes the annual fee calculation for test and research reactors for FY 2009. FY 2008 values are shown for comparison.

TABLE XV—ANNUAL FEE SUMMARY CALCULATIONS FOR TEST AND RESEARCH REACTORS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total budgeted resources	$0.99	$1.22
Less estimated part 170 receipts	−0.66	−0.72
Net part 171 resources	$0.33	$0.50
Allocated generic transportation	+ 0.01	+ 0.01
Allocated fee relief	−0.01	0.00
Billing adjustments	−0.02	−0.01
Total required annual fee recovery	0.31	0.50

This required annual fee recovery amount is divided equally among the four test and research reactors subject to annual fees, and results in a FY 2009 annual fee of $124,500 for each licensee. The increase in annual fees from FY 2008 to FY 2009 is due to an increase in budget resources for license renewal activities partially offset by higher part 170 revenue estimate for test and research reactors class.

f. Rare Earth Facilities

The one licensee who had an NRC specific license for receipt and processing of source material under the Rare Earth fee class transferred to the Agreement State, Commonwealth of Pennsylvania, effective March 31, 2008.

Because the agency does not anticipate receiving an application for a rare earth facility this fiscal year, no budget resources were allocated to this fee class and no annual fee will be published in FY 2009. NRC has also revised the fee category for this fee class from 2.A.(2)(c) to 2.A.(2)(f) in FY 2009.

g. Materials Users

Table XVI shows the calculation of the FY 2009 annual fee amount for materials users licensees. FY 2008 values are shown for comparison. Note the following fee categories under § 171.16 are included in this fee class: 1.C., 1.D., 2.B., 2.C., 3.A. through 3.S., 4.A. through 4.C., 5.A., 5.B., 6.A., 7.A. through 7.C., 8.A., 9.A. through 9.D., 16, and 17.

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total budgeted resources	$22.8	$ 28.7
Less estimated part 170 receipts	−2.0	−1.2
Net part 171 resources	$20.8	$27.5
Allocated generic transportation	+ 0.9	+ 0.8
Allocated surcharge	+ 0.3	+ 0.6
Billing adjustments	−0.5	−0.1

TABLE XVI—ANNUAL FEE SUMMARY CALCULATIONS FOR MATERIALS USERS—Continued

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total required annual fee recovery	21.4	28.8

The total required annual fees to be recovered from materials licensees increases in FY 2009 mainly because of increases in the budgeted resources allocated to this fee class for licensing activities, and a lower part 170 estimate. Annual fees for most fee categories within the materials users fee class increase. The number of licensees also decreases because of the expected transfer of licensees to the Commonwealth of Virginia. Because the agreement with the Commonwealth of Virginia is expected to be effective March 31, 2009, the licensees transferring to the Commonwealth of Virginia will be subject to one-half of the annual fees.

To equitably and fairly allocate the $28.8 million in FY 2009 budgeted costs to be recovered in annual fees assessed to the approximately 3,800 diverse materials users licensees, the NRC will continue to base the annual fees for each fee category within this class on the part 170 application fees and estimated inspection costs for each fee category. Because the application fees and inspection costs are indicative of the complexity of the license, this approach continues to provide a proxy for allocating the generic and other regulatory costs to the diverse categories of licenses based on NRC's cost to regulate each category. This fee calculation also continues to consider the inspection frequency (priority), which is indicative of the safety risk and

resulting regulatory costs associated with the categories of licenses.

The annual fee for these categories of materials users licenses is developed as follows:

Annual fee = Constant × [Application Fee + (Average Inspection Cost divided by Inspection Priority)] + Inspection Multiplier × (Average Inspection Cost divided by Inspection Priority) + Unique Category Costs.

The constant is the multiple necessary to recover approximately $20.9 million in general costs (including allocated generic transportation costs) and is 1.3 for FY 2009. The average inspection cost is the average inspection hours for each fee category multiplied by the hourly rate of $257. The inspection priority is the interval between routine inspections, expressed in years. The inspection multiplier is the multiple necessary to recover approximately $7.2 million in inspection costs, and is 1.71 for FY 2009. The unique category costs are any special costs that the NRC has budgeted for a specific category of licenses. For FY 2009, no unique costs were identified.

The annual fee to be assessed to each licensee also includes a net surcharge of $625,000 (see Section II.B.1., ''Application of ''Fee Relief/Surcharge,'' of this document). This surcharge is the result of subtracting the $87,000 in fee relief (reduction to annual fee) allocated to the materials users fee class from the approximately $712,000 in LLW surcharge costs allocated to the fee class. The amended annual fee for each fee category is shown in § 171.16(d).

h. Transportation

Table XVII shows the calculation of the FY 2009 generic transportation budgeted resources to be recovered through annual fees. FY 2008 values are shown for comparison.

TABLE XVII—ANNUAL FEE SUMMARY CALCULATIONS FOR TRANSPORTATION

[Dollars in millions]

Summary fee calculations	FY 2008 final	FY 2009 proposed
Total budgeted resources	$5.7	$6.1
Less estimated part 170 receipts	−2.3	−3.1
Net part 171 resources	3.4	3.0

The NRC must approve any package used for shipping nuclear material before shipment. If the package meets NRC requirements, the NRC issues a Radioactive Material Package Certificate of Compliance (CoC) to the organization requesting approval of a package. Organizations are authorized to ship radioactive material in a package approved for use under the general licensing provisions of 10 CFR Part 71. The resources associated with generic transportation activities are distributed to the license fee classes based on the number of CoCs benefitting (used by) that fee class, as a proxy for the generic transportation resources expended for each fee class.

The total FY 2009 budgeted resources for generic transportation activities, including those to support DOE CoCs, are $3.0 million. The budgeted resources for these activities in FY 2009 decreased compared with FY 2008, mostly due to higher part 170 revenue estimate partially offset by increase in budget resources for licensing activities. Generic transportation resources associated with fee-exempt entities are not included in this total. These costs are included in the appropriate fee-relief category (*e.g.*, the fee-relief category for nonprofit educational institutions).

Consistent with the policy established in the NRC's FY 2006 final fee rule (71 FR 30734; May 30, 2006), the NRC will recover generic transportation costs unrelated to DOE as part of existing annual fees for license fee classes. NRC will continue to assess a separate annual fee under § 171.16, fee category 18.A., for DOE transportation activities. The CoCs for DOE decreased in FY 2009 compared to FY 2008 resulting in a lower annual fee for DOE under fee category 18.A.

The amount of the generic resources allocated is calculated by multiplying the percentage of total CoCs used by each fee class (and DOE) by the total generic transportation resources to be recovered. In FY 2009, the generic transportation cost allocated to the most fee classes decreases compared to FY 2008 due to the decrease in total budgeted resources allocated for transportation.

The distribution of these resources to the license fee classes and DOE is shown in Table XVIII. The distribution is adjusted to account for the licensees in each fee class that are fee exempt. For example, if 3 CoCs benefit the entire test and research reactor class, but only 4 of 30 test and research reactors are subject to annual fees, the number of CoCs used to determine the proportion of generic transportation resources allocated to test and research reactor annual fees equals ((4/30)*3), or 0.4 CoCs.

TABLE XVIII—DISTRIBUTION OF GENERIC TRANSPORTATION RESOURCES, FY 2009

[Dollars in millions]

License fee class/DOE	Number CoCs benefiting fee class (or DOE)	Percentage of total CoCs (percent)	Allocated generic transportation resources
Total	121.5	100.0	$3.00
DOE	29.0	23.9	0.72
Operating Power Reactors	34.0	28.0	0.84
Spent Fuel Storage/Reactor Decommissioning	9.0	7.4	0.22
Test and Research Reactors	0.5	0.4	0.01
Fuel Facilities	17.0	14.0	0.42
Materials Users	32.0	26.3	0.79

The NRC is proposing to continue to assess DOE an annual fee based on the part 71 CoCs it holds, and not allocate these DOE-related resources to other licensees' annual fees, because these resources specifically support DOE. Note that DOE's proposed annual fee includes a reduction for the fee relief (see Section II.B.1, Application of ''Fee Relief/Surcharge,'' of this document), resulting in a total annual fee of $679,000 for FY 2009. This fee decrease from last year is primarily due to a decrease in the number of DOE CoCs.

4. Small Entity Fees

The small entity annual fee is charged to those licensees who qualify as small entities and would otherwise be required to pay annual fees as stipulated under § 171.16(d). Based on an in-depth

analysis conducted in FY 2009, the NRC is proposing to reduce the maximum small entity fee from $2,300 to $1,900 and the lower tier fee from $500 to $400. This reduction reflects the decrease in annual fees for the small materials licensees in the past two years.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951, August 10, 2007) to conform to the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to $6.5 million from $5 million. The NRC is now proposing to revise the small entity lower tier receipts-based threshold to $450,000 from $350,000. This change is approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

5. Fee Category Changes

The NRC is proposing to revise the fee categories for uranium recovery facilities in § 171.16. The new fee categories will better reflect the NRC's regulatory effort expended for the different types of facilities, both existing and planned. A more detailed discussion is in Section II.B.3.b., 'Uranium Recovery Facilities'. The NRC is also proposing to modify footnote 4 in § 171.16 to remove references to uranium milling. These references no longer apply since fee categories 2.A.(2) related to uranium recovery facilities have been revised.

The NRC is also proposing to revise the description for two fee categories, 7.A. and 17 in § 171.16. The NRC proposes to amend fee category 7.A., related to medical licenses, to more precisely state which medical devices it covers. Currently, the fee category applies to teletherapy devices. The NRC has historically included gamma stereotactic radiosurgery units (gamma knives) in this category per NUREG 1556, Volume 20, Appendix G. This amendment explicitly provides that fee category 7.A. include gamma knives and other similar beam therapy devices. The fee category 17 for master materials license is being expanded to include non-government entities with multi-site licenses.

The new fee category descriptions do not represent any additions to the types of licenses regulated by NRC. These changes will help clarify the types of licenses covered under specific categories for NRC licensees.

6. Administrative Amendments

The NRC applies the 10 percent of its budget that it receives as fee relief under OBRA–90, as amended, to offset the budget resources supporting activities which do not directly benefit current NRC licensees (fee-relief activities). Any remaining amount is allocated to all licensees' annual fees (see Section II.B.1., Application of ''Fee Relief/Surcharge'' of this document). The NRC is proposing to replace the term for this allocated amount in § 171.15 and § 171.16 from 'surcharge' to 'fee-relief adjustment'. The new term better describes the allocated amount since the fee relief is a reduction in annual fee for most fee classes in FY 2009. The allocation is an adjustment to the annual fee.

In summary, the NRC is proposing to—

1. Use the NRC's fee relief to reduce all licensees' annual fees, based on their percent of the NRC budget;
2. Revise the number of NRC licensees to reflect the expectation that the Commonwealth of Virginia will become an Agreement State on March 31, 2009;
3. Establish rebaselined annual fees for FY 2009; and
4. Reduce the maximum small entity fee from $2,300 to $1,900, and the lower tier fee from $500 to $400.
5. Revise some fee categories to better reflect NRC's regulatory effort.
6. Make certain administrative changes for purposes of clarification.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, ''Plain Language in Government Writing'' directed that the Government's writing be in plain language. This memorandum was published on June 10, 1998 (63 FR 31883). The NRC requests specific comments on the clarity and effectiveness of the language in the proposed rule. Comments should be sent to the address listed under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, 15 U.S.C. 3701, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using these standards is inconsistent with applicable law or is otherwise impractical. The NRC is proposing to amend the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 90 percent of its budget authority in FY 2009, as required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental assessment nor an environmental impact statement has been prepared for the proposed rule. By its very nature, this regulatory action does not affect the environment and, therefore, no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 44 U.S.C. 3501 *et seq*.

VII. Regulatory Analysis

With respect to 10 CFR part 170, this proposed rule was developed under Title V of the IOAA (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, in *National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the ''value to the recipient'' of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (DC Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (DC Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (DC Cir. 1976); and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (DC Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that:

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act of 1954, as amended, and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by the National Environmental Policy Act, 42 U.S.C. 4321;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR part 171, on November 5, 1990, the Congress passed OBRA–90, which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority, less appropriations from the NWF, be recovered through the assessment of fees. OBRA–90 was subsequently amended to extend the 100 percent fee recovery requirement through FY 2000. The FY 2001 Energy and Water Development Appropriation Act (EWDAA) amended OBRA–90 to decrease the NRC's fee recovery amount by 2 percent per year beginning in FY 2001, until the fee recovery amount was 90 percent in FY 2005. The FY 2006 EWDAA extended this 90 percent fee recovery requirement for FY 2006. Section 637 of the Energy Policy Act of 2005 made the 90 percent fee recovery requirement permanent in FY 2007. As a result, the NRC is required to recover approximately 90 percent of its FY 2009 budget authority, less the amounts appropriated from the NWF, WIR, and generic homeland security activities through fees. To comply with this statutory requirement and in accordance with (171.13, the NRC is publishing the amount of the FY 2009 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of CoCs, registrations of sealed source and devices, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provides that—

(1) The annual fees will be based on approximately 90 percent of the Commission's FY 2009 budget of $1,069.8 million less the funds directly appropriated from the NWF to cover the NRC's high-level waste program, and for WIR, generic homeland security activities, and less the amount of funds collected from part 170 fees;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (DC Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989). Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (DC Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the OBRA–90, as amended, to recover approximately 90 percent of its FY 2009 budget authority through the assessment of user fees. This Act further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule would establish the schedules of fees that are necessary to implement the Congressional mandate for FY 2009. This rule would result in increases in the annual fees charged to certain licensees and holders of certificates, registrations, and approvals, and decreases in annual fees for others. Licensees affected by the annual fee increases and decreases include those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Act (SBREFA) requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2009.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these amendments do not require the modification of, or additions to systems, structures, components, or the design of a facility, or the design approval or manufacturing license for a facility, or the procedures or organization required to design, construct, or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, Registrations, Approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for part 170 continues to read as follows:

Authority: Section 9701, Pub. L. 97–258, 96 Stat. 1051 (31 U.S.C. 9701); Sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 205a, Pub. L. 101–576, 104 Stat. 2842, as amended (31 U.S.C. 901, 902); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), sec. 623, Pub. L. 109–58, 119 Stat. 783 (42 U.S.C. 2201(w)); Sec. 651(e), Pub. L. 109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

2. Section 170.11 is revised to read as follows:

§ 170.11 Exemptions.

(a) No application fees, license fees, renewal fees, inspection fees, or special project fees shall be required for:

(1) A request/report submitted to the NRC—

(i) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the

requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(ii) In response to an NRC request from the Associate Office Director level or above to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(iii) As a means of exchanging information between industry organizations and the NRC. To receive this fee exemption,

(A) The report should be submitted for the specific purpose of supporting ongoing NRC generic regulatory improvements or efforts (*e.g.*, rules, regulations, regulatory guides and policy statements) and the agency, at the time the document is submitted, plans to use it for that purpose. The exemption applies even if ultimately the NRC does not use the document as planned;

(B) The NRC must be the primary beneficiary of the NRC's review and approval of these documents. This exemption does not apply to a topical report submitted for the purpose of obtaining NRC approval so that the report can be used by the industry in the future to address licensing or safety issues, even though the NRC may realize some benefits from its review and approval of the document;

(C) The fee exemption is requested in writing to the Chief Financial Officer in accordance with 10 CFR 170.5, and the Chief Financial Officer grants this request in writing.

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(b) The Commission may, upon application by an interested person, or upon its own initiative, grant such exemptions from the requirements of this part as it determines are authorized by law and are otherwise in the public interest. Applications for exemption under this paragraph may include activities such as, but not limited to, the use of licensed materials for educational or noncommercial public displays or scientific collections.

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, 10 CFR part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the professional staff-hour rate of $257 per hour.

4. In § 170.21, in the table, fee category K is revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

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SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
* * * * * * *	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110.	
1. Application for import or export of production and utilization facilities [4] (including reactors and other facilities) and exports of components requiring Commission and Executive Branch review, for example, actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$16,700
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8).	
Application—new license, or amendment; or license exemption request	9,800
3. Application for export of components requiring the assistance of the Executive Branch to obtain foreign government assurances.	
Application—new license, or amendment; or license exemption request	4,100
4. Application for export of facility components and equipment (examples provided in 10 CFR part 110, Appendix A, Items (5) through (9)) not requiring Commission or Executive Branch review, or obtaining foreign government assurances.	
Application—new license, or amendment; or license exemption request	2,600
5. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms or conditions or to the type of facility or component authorized for export and therefore, do not require in-depth analysis or review or consultation with the Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment to license	770
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[1] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (e.g., 10 CFR 50.12, 10 CFR 73.5) and any other sections in effect now or in the future, regardless if the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect when the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

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[4] Imports only of major components for end-use at NRC-licensed reactors are now authorized under NRC general import license.

5. In § 170.31, the table is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

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SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	Full Cost
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210	Full Cost
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	Full Cost
(b) Gas centrifuge enrichment demonstration facilities	Full Cost
(c) Others, including hot cell facilities	Full Cost
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200].	Full Cost
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers.[4]	
Application [Program Code(s): 22140]	$1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those under Category 1.A.[4]	
Application [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	$2,400
E. Licenses or certificates for construction and operation of a uranium enrichment facility [Program Code(s): 21200]	Full Cost
2. Source material:	
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400].	Full Cost
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	Full Cost
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	Full Cost
(c) Expanded In Situ Recovery facilities [Program Code(s): 11500]	Full Cost
(d) In Situ Recovery Resin facilities	Full Cost
(e) Resin Toll Milling facilities	Full Cost
(f) Other facilities [Program Code(s): 11700]	Full Cost
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600].	Full Cost
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2).	Full Cost
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water.	Full Cost
B. Licenses which authorize the possession, use, and/or installation of source material for shielding.	
Application [Program Code(s): 11210]	$570
C. All other source material licenses.	
Application [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	$10,100
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03211, 03212, 03213]	$12,000
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution.	
Application [Program Code(s): 03214, 03215, 22135, 22162]	$4,500
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4). These licenses are covered by fee Category 3.D.	
Application [Program Code(s): 02500, 02511, 02513]	$6,500
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72 and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 170.11(a)(4).	
Application [Program Code(s): 02512, 02514]	$4,400
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	
Application [Program Code(s): 03510, 03520]	$3,000

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03511]	$6,000
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes.	
Application [Program Code(s): 03521]	$28,700
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03255]	$5,500
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter.	
Application [Program Code(s): 03250, 03251, 03252, 03253, 03254, 03256]	$10,000
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03240, 03241, 03243]	$1,800
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter.	
Application [Program Code(s): 03242, 03244]	$1,100
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	$10,100
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution.	
Application [Program Code(s): 03620]	$3,500
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4.A., 4.B., and 4.C.	
Application [Program Code(s): 03219, 03225, 03226]	$6,100
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations.	
Application [Program Code(s): 03310, 03320]	$5,800
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D.	
Application [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	$1,400
Q. Registration of a device(s) generally licensed under part 31 of this chapter.	
Registration	$310
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section.[6]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified.	
Application [Program Code(s): 02700]	$1,180
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5).C.	
Application [Program Code(s): 02710]	$1,400
S. Licenses for production of accelerator-produced radionuclides.	
Application [Program Code(s): 03210]	$6,500
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material. [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101].	Full Cost
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03234]	$4,400
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material.	
Application [Program Code(s): 03232]	$4,600
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies.	
Application [Program Code(s): 03110, 03111, 03112]	$3,400

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
B. Licenses for possession and use of byproduct material for field flooding tracer studies.	
Licensing [Program Code(s): 03113]	Full Cost
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material.	
Application [Program Code(s): 03218]	$20,500
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices.	
Application [Program Code(s): 02300, 02310]	$11,200
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.	
Application [Program Code(s): 02110]	$8,000
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices.	
Application [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	$2,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities.	
Application [Program Code(s): 03710]	$1,180
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution.	
Application—each device	$8,300
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices.	
Application—each device	$8,300
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution.	
Application—each source	$5,800
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel.	
Application—each source	$980
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers.	
1. Spent Fuel, High-Level Waste, and plutonium air packages	Full Cost
2. Other Casks	Full Cost
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators.	
Application	$3,100
Inspections	Full Cost
2. Users.	
Application	$3,100
Inspections	Full Cost
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices).	Full Cost
11. Review of standardized spent fuel facilities	Full Cost
12. Special projects:	
Including approvals, preapplication/licensing activities, and inspections	Full Cost
13. A. Spent fuel storage cask Certificate of Compliance	Full Cost
B. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost
14. A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter.	Full Cost
B. Site-specific decommissioning activities associated with unlicensed sites, regardless of whether or not the sites have been previously licensed. Part 170 fees for these activities will not be charged until July 25, 2007.	Full Cost
15. Import and Export licenses:	
Licenses issued under part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, and the export only of heavy water, or nuclear grade graphite (fee categories 15.A. through 15.E).	
A. Application for export or import of nuclear materials, including radioactive waste requiring Commission and Executive Branch review, for example, those actions under 10 CFR 110.40(b).	
Application—new license, or amendment; or license exemption request	$16,700
B. Application for export or import of nuclear material, including radioactive waste, requiring Executive Branch review, but not Commission review. This category includes applications for the export and import of radioactive waste and requires NRC to consult with domestic host state authorities, Low-Level Radioactive Waste Compact Commission, the U.S. Environmental Protection Agency, etc.	
Application—new license, or amendment; or license exemption request	$9,800
C. Application for export of nuclear material, for example, routine reloads of low enriched uranium reactor fuel and/or natural uranium source material requiring the assistance of the Executive Branch to obtain foreign government assurances.	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2 3]
Application—new license, or amendment; or license exemption request	$4,100
D. Application for export or import of nuclear material, including radioactive waste, not requiring Commission or Executive Branch review, or obtaining foreign government assurances. This category includes applications for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties located in the same country, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures.	
Application—new license, or amendment; or license exemption request	$2,600
E. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign government authorities.	
Minor amendment	$770
Licenses issued under part 110 of this chapter for the import and export only of Category 1 and Category 2 quantities of radioactive material listed in Appendix P to part 110 of this chapter (fee categories 15.F. through 15.R.).[5]	
Category 1 Exports:	
F. Application for export of Category 1 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).	
Application—new license, or amendment; or license exemption request	$16,700
G. Application for export of Category 1 materials requiring Executive Branch review, Commission review, and/or government-to-government consent.	
Application—new license, or amendment; or license exemption request	$9,800
H. Application for export of Category 1 materials requiring Commission review and government-to-government consent.	
Application—new license, or amendment; or license exemption request	$6,200
I. Application for export of Category 1 material requiring government-to-government consent.	
Application—new license, or amendment; or license exemption request	$5,100
Category 2 Exports:	
J. Application for export of Category 2 materials involving an exceptional circumstances review under 10 CFR 110.42(e)(4).	
Application—new license, or amendment; or license exemption request	$16,700
K. Applications for export of Category 2 materials requiring Executive Branch review and/or Commission review.	
Application—new license, or amendment; or license exemption request	$9,800
L. Application for the export of Category 2 materials.	
Application—new license, or amendment; or license exemption request	$4,600
Category 1 Imports:	
M. Application for the import of Category 1 material requiring Commission review.	
Application—new license, or amendment; or license exemption request	$4,900
N. Application for the import of Category 1 material.	
Application—new license, or amendment; or license exemption request	$4,100
Category 2 Imports:	
O. Application for the import of Category 2 material.	
Application—new license, or amendment; or license exemption request	$3,600
Category 1 Imports with Agent and Multiple Licensees:	
P. Application for the import of Category 1 material with agent and multiple licensees requiring Commission review.	
Application—new license, or amendment; or license exemption request	$5,700
Q. Application for the import of Category 1 material with agent and multiple licensees.	
Application—new license, or amendment; or license exemption request	$4,600
Minor Amendments (Category 1 and 2 Export and Imports):	
R. Minor amendment of any active export or import license, for example, to extend the expiration date, change domestic information, or make other revisions which do not involve any substantive changes to license terms and conditions or to the type/quantity/chemical composition of the material authorized for export and, therefore, do not require in-depth analysis, review, or consultations with other Executive Branch, U.S. host state, or foreign authorities.	
Minor amendment	$770
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20.	
Application	$1,800
17. Master materials licenses of broad scope issued to Government agencies and other entities:	
Application	$29,900
18. Department of Energy.	
A. Certificates of Compliance. Evaluation of casks, packages, and shipping containers (including spent fuel, high-level waste, and other casks, and plutonium air packages).	Full Cost
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	Full Cost

[1] *Types of fees*—Separate charges, as shown in the schedule, will be assessed for pre-application consultations and reviews; applications for new licenses, approvals, or license terminations; possession only licenses; issuance of new licenses and approvals; certain amendments and renewals to existing licenses and approvals; safety evaluations of sealed sources and devices; generally licensed device registrations; and certain inspections. The following guidelines apply to these charges:

(a) *Application and registration fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1.C. only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, pre-application consultations and reviews of other documents submitted to NRC for review, and project manager time for fee categories subject to full cost fees, are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment fees.* Applications for amendments to export and import licenses must be accompanied by the prescribed amendment fee for each license affected. An application for an amendment to an export or import license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories, in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and non-routine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

(e) *Generally licensed device registrations under 10 CFR 31.5.* Submittals of registration information must be accompanied by the prescribed fee.

[2] Fees will not be charged for orders related to civil penalties or other civil sanctions issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these orders. For orders unrelated to civil penalties or other civil sanctions, fees will be charged for any resulting licensee-specific activities not otherwise exempted from fees under this chapter. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now or in the future), regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9.A. through 9.D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect when the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1.A., 1.B., and 1.E. are not subject to fees under Categories 1.C. and 1.D. for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] For a combined import and export license application for material listed in Appendix P to part 110 of this chapter, only the higher of the two applicable fee amounts must be paid.

[6] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIALS LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC.

6. The authority citation for part 171 continues to read as follows:

Authority: Section 7601, Pub. L. 99–272, 100 Stat. 146, as amended by Sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2132, as amended by Sec. 6101, Pub. L. 101–508, 104 Stat. 1388, as amended by Sec. 2903a, Pub. L. 102–486, 106 Stat. 3125 (42 U.S.C. 2213, 2214), and as amended by Title IV, Pub. L. 109–103, 119 Stat. 2283 (42 U.S.C. 2214); Sec. 301, Pub. L. 92–314, 86 Stat. 227 (42 U.S.C. 2201w); Sec. 201, Pub. L. 93–438, 88 Stat. 1242, as amended (42 U.S.C. 5841); Sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note), Sec. 651(e), Pub. L.109–58, 119 Stat. 806–810 (42 U.S.C. 2014, 2021, 2021b, 2111).

7. In § 171.15, paragraph (b)(1), the introductory text of paragraph (b)(2), paragraph (c)(1), the introductory text of paragraph (c)(2) and the introductory text of paragraph (d)(1), and paragraphs (d)(2), (d)(3), and the introductory text of paragraph (e), are revised to read as follows:

§ 171.15 Annual fees: Reactor licenses and independent spent fuel storage licenses.

* * * * *

(b)(1) The FY 2009 annual fee for each operating power reactor which must be collected by September 30, 2009, is $4,608,000.

(2) The FY 2009 annual fee is comprised of a base annual fee for power reactors licensed to operate, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (fee-relief adjustment). The activities comprising the FY 2009 spent storage/reactor decommissioning base annual fee are shown in paragraphs (c)(2)(i) and (ii) of this section. The activities comprising the FY 2009 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2009 base annual fee for operating power reactors are as follows:

* * * * *

(c)(1) The FY 2009 annual fee for each power reactor holding a 10 CFR part 50 license that is in a decommissioning or possession only status and has spent fuel onsite, and each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is $127,000.

(2) The FY 2009 annual fee is comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (fee-relief adjustment). The activities comprising the FY 2009 fee-relief adjustment are shown in paragraph (d)(1) of this section. The activities comprising the FY 2009 spent fuel storage/reactor decommissioning rebaselined annual fee are:

* * * * *

(d)(1) The fee-relief adjustment allocated to annual fees includes a surcharge for the activities listed in paragraph (d)(1)(i) of this section, plus the amount remaining after total budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section is reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (d)(1)(ii) and (d)(1)(iii) of this section for a given FY, an annual fee reduction will be allocated to annual fees. The activities comprising the FY 2009 fee-relief adjustment are as follows:

* * * * *

(2) The total FY 2009 fee-relief adjustment allocated to the operating power reactor class of licenses is −$1.3 million, not including the amount allocated to the spent fuel storage/reactor decommissioning class. The FY 2009 operating power reactor fee-relief adjustment to be assessed to each operating power reactor is approximately −$12,900. This amount is calculated by dividing the total operating power reactor fee-relief adjustment (−$1.3 million) by the number of operating power reactors (104).

(3) The FY 2009 fee-relief adjustment allocated to the spent fuel storage/reactor decommissioning class of licenses is −$72,000. The FY 2008 spent fuel storage/reactor decommissioning fee-relief adjustment

to be assessed to each operating power reactor, each power reactor in decommissioning or possession only status that has spent fuel onsite, and to each independent spent fuel storage 10 CFR part 72 licensee who does not hold a 10 CFR part 50 license is approximately −$585. This amount is calculated by dividing the total fee-relief adjustment costs allocated to this class by the total number of power reactor licenses, except those that permanently ceased operations and have no fuel onsite, and 10 CFR part 72 licensees who do not hold a 10 CFR part 50 license.

(e) The FY 2009 annual fees for licensees authorized to operate a test and research (non-power) reactor licensed under part 50 of this chapter, unless the reactor is exempted from fees under § 171.11(a), are as follows:

Research reactor	$124,500
Test reactor	$124,500

8. In § 171.16, paragraphs (b), (c), (d), and the introductory text of paragraph (e) are revised to read as follows:

§ 171.16 Annual fees: Materials licensees, holders of certificates of compliance, holders of sealed source and device registrations, holders of quality assurance program approvals, and government agencies licensed by the NRC.

* * * * *

(b) The annual fee is comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the fee-relief adjustment are shown in paragraph (e) of this section. The base annual fee is the sum of budgeted costs for following activities:

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification along with its annual fee payment, the licensee may pay reduced annual fees as shown in the following table. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due. The small entity fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $6.5 million	$1,900
Less than 450,000	400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$450,000 to $6.5 million	1,900
Less than $450,000	400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,900
Fewer than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400

(d) The FY 2009 annual fees are comprised of a base annual fee and an allocation for fee-relief adjustment. The activities comprising the FY 2009 fee-relief adjustment are shown for convenience in paragraph (e) of this section. The FY 2009 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown in the following table:

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material (High Enriched Uranium) [Program Code(s): 21130]	$4,721,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel [Program Code(s): 21210]	1,659,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities.	
(a) Facilities with limited operations [Program Code(s): 21310, 21320]	770,000
(b) Gas centrifuge enrichment demonstration facilities	924,000
(c) Others, including hot cell facilities	411,000
B. Licenses for receipt and storage of spent fuel and reactor-related Greater than Class C (GTCC) waste at an independent spent fuel storage installation (ISFSI) [Program Code(s): 23200]	[11] N/A
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers [Program Code(s): 22140]	2,700
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in (150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2) [Program Code(s): 22110, 22111, 22120, 22131, 22136, 22150, 22151, 22161, 22163, 22170, 23100, 23300, 23310]	7,700
E. Licenses or certificates for the operation of a uranium enrichment facility [Program Code(s): 21200]	2,823,000
2. Source material:	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
A. (1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride [Program Code(s): 11400]	975,000
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ recovery, heap-leaching, ore buying stations, ion exchange facilities and in-processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
(a) Conventional and Heap Leach facilities [Program Code(s): 11100]	32,200
(b) Basic In Situ Recovery facilities [Program Code(s): 11500]	30,600
(c) Expanded In Situ Recovery facilities [Program Code(s): 11500]	34,700
(d) In Situ Recovery Resin facilities	[5] N/A
(e) Resin Toll Milling facilities	[5] N/A
(f) Other facilities [4] [Program Code(s): 11700]	[5] N/A
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4) [Program Code(s): 11600]	[5] N/A
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	10,500
(5) Licenses that authorize the possession of source material related to removal of contaminants (source material) from drinking water	7,300
B. Licenses that authorize only the possession, use and/or installation of source material for shielding [Program Code(s): 11210]	1,330
C. All other source material licenses [Program Code(s): 11200, 11220, 11221, 11230, 11300, 11800, 11810]	17,700
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03211, 03212, 03213]	40,600
B. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution [Program Code(s): 03214, 03215, 22135, 22162]	10,500
C. Licenses issued under §§ 32.72 and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under (171.11(a)(1). These licenses are covered by fee under Category 3.D. [Program Code(s): 02500, 02511, 02513]	13,600
D. Licenses and approvals issued under §§ 32.72 and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under ((§§ 32.72 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under § 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when included on the same license [Program Code(s): 02512, 02514]	8,900
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units) [Program Code(s): 03510, 03520]	6,800
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03511]	12,900
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes [Program Code(s): 03521]	64,000
H. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03255]	8,500
I. Licenses issued under Subpart A of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of part 30 of this chapter [Program Code(s): 03250, 03251, 03252, 03253, 03254, 03256]	15,200
J. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03240, 03241, 03243]	3,400
K. Licenses issued under Subpart B of part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under part 31 of this chapter [Program Code(s): 03242, 03244]	2,500
L. Licenses of broad scope for possession and use of byproduct material issued under parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 01100, 01110, 01120, 03610, 03611, 03612, 03613]	20,200

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
M. Other licenses for possession and use of byproduct material issued under part 30 of this chapter for research and development that do not authorize commercial distribution [Program Code(s): 03620]	7,600
N. Licenses that authorize services for other licensees, except: (1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3.P.; and (2) Licenses that authorize waste disposal services are subject to the fees specified in fee categories 4.A., 4.B., and 4.C. [Program Code(s): 03219, 03225, 03226]	11,600
O. Licenses for possession and use of byproduct material issued under part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under part 40 of this chapter when authorized on the same license [Program Code(s): 03310, 03320]	23,100
P. All other specific byproduct material licenses, except those in Categories 4.A. through 9.D. [Program Code(s): 02400, 02410, 03120, 03121, 03122, 03123, 03124, 03220, 03221, 03222, 03800, 03810, 22130]	3,800
Q. Registration of devices generally licensed under part 31 of this chapter	[13] N/A
R. Possession of items or products containing radium-226 identified in 10 CFR 31.12 which exceed the number of items or limits specified in that section:[14]	
1. Possession of quantities exceeding the number of items or limits in 10 CFR 31.12(a)(4), or (5) but less than or equal to 10 times the number of items or limits specified [Program Code(s): 02700]	3,400
2. Possession of quantities exceeding 10 times the number of items or limits specified in 10 CFR 31.12(a)(4), or (5) [Program Code(s): 02710]	3,800
S. Licenses for production of accelerator-produced radionuclides [Program Code(s): 03210]	12,300
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material [Program Code(s): 03231, 03233, 03235, 03236, 06100, 06101]	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03234]	19,000
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material [Program Code(s): 03232]	12,000
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies [Program Code(s): 03110, 03111, 03112]	9,900
B. Licenses for possession and use of byproduct material for field flooding tracer studies [Program Code(s): 03113]	[5] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material [Program Code(s): 03218]	36,100
7. Medical licenses:	
A. Licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in gamma stereotactic radiosurgery units, teletherapy devices, or similar beam therapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [Program Code(s): 02300, 02310]	17,800
B. Licenses of broad scope issued to medical institutions or two or more physicians under parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02110]	36,800
C. Other licenses issued under parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license.[9] [Program Code(s): 02120, 02121, 02200, 02201, 02210, 02220, 02230, 02231, 02240, 22160]	6,300
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities [Program Code(s): 03710]	3,400
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	10,700
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	10,700
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	7,500
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	1,300
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
2. Other Casks	[6] N/A
B. Quality assurance program approvals issued under part 71 of this chapter.	
1. Users and Fabricators	[6] N/A
2. Users	[6] N/A
C. Evaluation of security plans, route approvals, route surveys, and transportation security devices (including immobilization devices)	[6] N/A
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210	[12] N/A
14. Decommissioning/Reclamation:	
A. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
B. Site-specific decommissioning activities associated with unlicensed sites, whether or not the sites have been previously licensed	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A
17. Master materials licenses of broad scope issued to Government agencies and other entities	168,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 679,000
B. Uranium Mill Tailings Radiation Control Act (UMTRCA) activities	342,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the current FY. The annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses before October 1, 2007, and permanently ceased licensed activities entirely before this date. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the FY and for new licenses issued during the FY will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1.A.(1) are not subject to the annual fees for Categories 1.C. and 1.D. for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each FY, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the **Federal Register** for notice and comment.

[4] An other license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. If NRC issues a license for these categories, the Commission will consider establishing an annual fee for this type of license.

[6] Standardized spent fuel facilities, 10 CFR parts 71 and 72 Certificates of Compliance and related Quality Assurance program approvals, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses under Categories 7.B. or 7.C.

[10] This includes Certificates of Compliance issued to DOE that are not funded from the Nuclear Waste Fund.

[11] See (§ 171.15(c)).

[12] See (§ 171.15(c)).

[13] No annual fee is charged for this category because the cost of the general license registration program applicable to licenses in this category will be recovered through 10 CFR part 170 fees.

[14] Persons who possess radium sources that are used for operational purposes in another fee category are not also subject to the fees in this category. (This exception does not apply if the radium sources are possessed for storage only.)

(e) The fee-relief adjustment allocated to annual fees includes the budgeted resources for the activities listed in paragraph (e)(1) of this section, plus the total budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section as reduced by the appropriations NRC receives for these types of activities. If the NRC's appropriations for these types of activities are greater than the budgeted resources for the activities included in paragraphs (e)(2) and (e)(3) of this section for a given FY, an annual fee reduction will be allocated to annual fees. The activities comprising the FY 2009 fee-relief adjustment are as follows:

* * * * *

Dated at Rockville, Maryland, this 20th day of February 2009.

For the Nuclear Regulatory Commission.

J.E. Dyer,

Chief Financial Officer.

Note: THIS APPENDIX WILL NOT APPEAR IN THE CODE OF FEDERAL REGULATIONS.

APPENDIX A TO THIS PROPOSED RULE—REGULATORY FLEXIBILITY ANALYSIS FOR THE PROPOSED AMENDMENTS TO 10 CFR PART 170 (LICENSE FEES) AND 10 CFR PART 171 (ANNUAL FEES)

I. Background

The Regulatory Flexibility Act (RFA), as amended 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as

small entities (10 CFR 2.810). These size standards were based on the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in (171.16(c) of this proposed rule are based on the NRC's size standards.

The NRC is required each year, under OBRA–90, as amended, to recover approximately 90 percent of its budget authority (less amounts appropriated from the NWF and for other activities specifically removed from the fee base), through fees to NRC licensees and applicants. In total, the NRC is required to bill approximately $864.8 million in fees for FY 2009.

OBRA–90 requires that the schedule of charges established by rulemaking should fairly and equitably allocate the total amount to be recovered from the NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. Since FY 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by the NRC in identifying and determining the fees to be assessed and collected in any given FY.

The Commission is proposing to rebaseline its part 171 annual fees in FY 2009. Rebaselining fees results in increased annual fees for three classes of licensees (power reactors, non-power reactors, and fuel facilities), and decreased annual fees for two classes of licensees (spent fuel storage/reactor decommissioning and transportation). Within the materials users and uranium recovery fee classes, annual fees for most licensees increase, while annual fees for some licensees decrease.

The Small Business Regulatory Enforcement Act (SBREFA) provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a ''major'' rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective.

The Small Business Regulatory Enforcement Act also requires that an agency prepare a guide to assist small entities in complying with each rule for which a final RFA is prepared. This analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2009 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the fees on materials licensees. In FY 2008, about 26 percent of these licensees (approximately 1,100 licensees) qualified as small entities.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified:

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies (''Mom and Pop'' operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soil testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Over 3,000 licenses, approvals, and registration terminations have been requested since the NRC first established annual fees for materials licenses. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives in accordance with the RFA in developing each of its fee rules since FY 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity; therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States (Washington, Texas, Illinois, Nebraska, New York, and Utah), were used as benchmarks in the establishment of the maximum small entity annual fee in FY 1991.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's FY 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In FY 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Based on the changes that had occurred since FY 1991, the NRC re-analyzed its maximum small entity annual fees in FY 2000, and determined that the small entity fees should be increased by 25 percent to reflect the increase in the average fees paid by other materials licensees since FY 1991, as well as changes in the fee structure for materials licensees. The structure of the fees that NRC charged to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through part 170 fees for services, are now included in the part 171 annual fees assessed to materials licensees. As a result of the 25 percent increase, the

maximum small entity annual fee increased from $1,800 to $2,300 in FY 2000. Although the maximum annual fee for small entities increased from $1,800 to $2,300, the total fee for many small entities was reduced because they no longer paid part 170 fees for services. The costs not recovered from small entities were allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the NRC determined that the maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars range. Therefore, the NRC continued to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts, and for manufacturing concerns and educational institutions not State or publicly supported, with fewer than 35 employees. The NRC also increased the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase resulted in the lower tier small entity fee increasing from $400 to $500 in FY 2000.

The NRC stated in the RFA for the FY 2001 final fee rule that it would re-examine the small entity fees every two years, in the same years in which it conducts the biennial review of fees as required by the Chief Financial Officer's Act. Accordingly, the NRC examined the small entity fees again in FY 2003 and FY 2005, and determined that a change was not warranted to the small entity fees established in FY 2001.

As part of the small entity review in FY 2007, the NRC also considered whether it should establish reduced fees for small entities under part 170. The NRC received one comment requesting that such small entity fees be considered for certain export licenses, particularly in light of the recent increases to part 170 fees for these licenses. Because the NRC's part 170 fees are not assessed to a licensee or applicant on a regular basis (*i.e.*, they are only assessed when a licensee or applicant requests a specific service from the NRC), the NRC does not believe that the impact of its part 170 fees warrants a fee reduction for small entities under part 170, in addition to the part 171 small entity fee reduction. Regarding export licenses, in particular, the NRC notes that interested parties can submit a single application for a broad scope, multi-year license that permits exports to multiple countries. Because the NRC's fees are charged per application, this streamlining process minimizes the fees for export applicants. Because a single NRC fee can cover numerous exports, and because there are a limited number of entities who apply for these licenses, the NRC does not anticipate that the part 170 export fees will have a significant impact on a substantial number of small entities. Therefore, the NRC retained the $2,300 small entity annual fee and the $500 lower tier small entity annual fee for FY 2007, and FY 2008.

For the biennial review of the FY 2009 small entity fees, the NRC conducted an in-depth review. The review noted the significant changes between FY 2000 and FY 2008 in both the external and internal environment which has impacted fees for NRC's small materials users licensees. Since FY 2000 the number of small entity licensees in the upper tier has increased approximately 53 percent. In addition, due to changes in the law, NRC is now only required to recover 90 percent of its budget authority compared to the 100 percent recovery requirement in FY 2000. This ten percent fee relief has influenced the small materials users' annual fees. A decrease in the NRC's budget allocation to the small materials users has also influenced their annual fees in the last two years. Based on the review, the NRC will change the small entity fee for FY 2009 and establish a new methodology for reviewing the small entity fees every other year. The NRC will now determine the maximum small entity fee each biennial year using a fixed percentage of 39 percent applied to the prior two-year weighted average of small materials users fees for all fee categories which have small entity licensees.

For FY 2009, these changes result in a maximum small entity fee of $1,900 and a lower tier annual fee of $400. The advantage of the new methodology is that the NRC's small entity licensees will be able to predict the change in their fee in the biennial year based on the small materials fees for the previous two years. Using a two-year weighted average will help smooth the fluctuations caused by programmatic and budget variables and will reflect the importance of the fee categories with the greater number of small entities. Since the current small entity annual fee of $2,300 is 39 percent of the two-year weighted average for all fee categories in FY 2005 and FY 2006 that have an upper tier small entity licensee, the agency will retain the 39 percent as the percentage applied to the prior two-year weighted average of small materials users fees. The lower tier annual fee remains at 22 percent of the maximum small entity annual fee.

IV. Summary

The NRC has determined that the 10 CFR part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to recover 90 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. Based on its regulatory flexibility analysis, the NRC concludes that a maximum annual fee of $1,900 for small entities and a lower-tier small entity annual fee of $400 for small businesses and not-for-profit organizations with gross annual receipts of less than $450,000, small governmental jurisdictions with a population of fewer than 20,000, small manufacturing entities that have fewer than 35 employees, and educational institutions that are not State or publicly supported and have fewer than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA.

In 2007, the NRC revised its receipts-based size standards (72 FR 44951, August 10, 2007) to conform to the Small Business Agency standards. The maximum average gross annual receipts (upper tier) to qualify as a small entity were changed to $6.5 million from $5 million. The NRC is now proposing to revise the small entity lower tier receipts-based threshold to $450,000 from $350,000. This change is approximately the same percentage adjustment as the change in the upper tier receipts-based standard.

ATTACHMENT 1 TO APPENDIX A—U.S. Nuclear Regulatory Commission Small Entity Compliance Guide; Fiscal Year 2009

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Congressional Review Act requires all Federal agencies to prepare a written guide for each ''major'' final rule, as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, is considered a ''major'' rule under the Congressional Review Act. Therefore, in compliance with the law, this guide has been prepared to assist NRC materials licensees in complying with the FY 2009 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2009 annual fees assessed under 10 CFR part 171. The NRC has established two tiers of annual fees for those materials licensees who qualify as small entities under the NRC's size standards.

Licensees who meet the NRC's size standards for a small entity (listed in 10 CFR 2.810) must submit a completed NRC Form 526 ''Certification of Small Entity Status for the Purposes of Annual Fees Imposed under 10 CFR Part 171'' to qualify for the reduced annual fee. This form can be accessed on the NRC's Web site at *http://www.nrc.gov.* The form can then be accessed by selecting ''Business with NRC,'' then ''NRC Forms,'' selecting NRC Form 526. For licensees who cannot access the NRC's Web site, NRC Form 526 may be obtained through the local point of contact listed in the NRC's ''Materials Annual Fee Billing Handbook,'' NUREG/BR–0238, which is enclosed with each annual fee billing. Alternatively, the form may be obtained by calling the fee staff at 301–415–7554, or by e-mailing the fee staff at *fees.resource@nrc.gov.* The completed form, the appropriate small entity fee, and the payment copy of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team, at the address indicated on the invoice. Failure to file the NRC small entity certification Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

For purposes of compliance with its regulations (10 CFR 2.810), the NRC has defined a small entity as follows:

(1) *Small business*—a for-profit concern that provides a service, or a concern that is not engaged in manufacturing, with average

gross receipts of $6.5 million or less over its last 3 completed fiscal years;

(2) *Manufacturing industry*—a manufacturing concern with an average of 500 or fewer employees based on employment during each pay period for the preceding 12 calendar months;

(3) *Small organizations*—a not-for-profit organization that is independently owned and operated and has annual gross receipts of $6.5 million or less;

(4) *Small governmental jurisdiction*—a government of a city, county, town, township, village, school district or special district, with a population of fewer than 50,000;

(5) *Small educational institution*—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not State or publicly supported and has 500 or fewer employees.[1]

To further assist licensees in determining if they qualify as a small entity, the following guidelines are provided, which are based on the Small Business Administration's regulations (13 CFR part 121).

(1) A small business concern is an independently owned and operated entity which is not considered dominant in its field of operations.

(2) The number of employees means the total number of employees in the parent company, any subsidiaries and/or affiliates, including both foreign and domestic locations (*i.e.*, not solely the number of employees working for the licensee or conducting NRC licensed activities for the company).

(3) Gross annual receipts includes all revenue received or accrued from any source, including receipts of the parent company, any subsidiaries and/or affiliates, and account for both foreign and domestic locations. Receipts include all revenues from sales of products and services, interest, rent, fees, and commissions, from whatever sources derived (*i.e.*, not solely receipts from NRC licensed activities).

(4) A licensee who is a subsidiary of a large entity, including a foreign entity, does not qualify as a small entity.

NRC Small Entity Fees

In 10 CFR 171.16(c), the NRC has established two tiers of fees for licensees that qualify as a small entity under the NRC's size standards. The fees are as follows:

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing (Average gross receipts over last 3 completed fiscal years):	
$450,000 to $6.5 million	$1,900
Less than $450,000	400
Small Not-For-Profit Organizations (Annual Gross Receipts):	
$450,000 to $6.5 million	1,900
Less than $450,000	400
Manufacturing entities that have an average of 500 employees or fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	1,900
Fewer than 20,000	400
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Fewer:	
35 to 500 employees	1,900
Fewer than 35 employees	400

Instructions for Completing NRC Small Entity Form 526

1. Complete all items on NRC Form 526 as follows:

(Note: Incomplete or improperly completed forms will be returned as unacceptable.)

(a) Enter the license number and invoice number exactly as they appear on the annual fee invoice.

(b) Enter the North American Industry Classification System (NAICS).

(c) Enter the licensee's name and address exactly as they appear on the invoice. Annotate name and/or address changes for billing purposes on the payment copy of the invoice—include contact's name, telephone number, e-mail address, and company Web site address. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license.

(d) Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(i) A licensee who is a subsidiary of a large entity, including foreign entities, does not qualify as a small entity. The calculation of a firm's size includes the employees or receipts of all affiliates. Affiliation with another concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indications of affiliation. The affiliated business concerns need not be in the same line of business.

(ii) Gross annual receipts, as used in the size standards, include all revenue received or accrued by your company from all sources, regardless of the form of the revenue and not solely receipts from licensed activities.

(iii) NRC's size standards on small entity are based on the Small Business Administration's regulations (13 CFR part 121).

(iv) The size standards apply to the licensee, not to the individual authorized users who may be listed in the license.

2. If the invoice states the ''Amount Billed Represents 50% Proration,'' the amount due is not the prorated amount shown on the invoice but rather one-half of the maximum small entity annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies (either $950 or $200) for each category billed.

3. If the invoice amount is less than the reduced small entity annual fee shown on this form, pay the amount on the invoice; there is no further reduction. In this case, do not file NRC Form 526. However, if the invoice amount is greater than the reduced small entity annual fee, file NRC Form 526 and pay the amount applicable to the size standard you checked on the form.

4. The completed NRC Form 526 must be submitted with the required annual fee payment and the ''Payment Copy'' of the invoice to the address shown on the invoice.

5. 10 CFR 171.16(c)(3) states licensees shall submit a new certification with its annual fee payment each year. Failure to submit NRC Form 526 at the time the annual fee is paid will require the licensee to pay the full amount of the invoice.

The NRC sends invoices to its licensees for the full annual fee, even though some licensees qualify for reduced fees as small entities. Licensees who qualify as small entities and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which is either $1,900 or $400 for a full year, depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first 6 months of the fiscal year,

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

and licensees who file for termination or for a ''possession only'' license and permanently cease licensed activities during the first 6 months of the fiscal year, pay only 50 percent of the annual fee for that year. Such invoices state that the ''amount billed represents 50% proration.''

Licensees must file a new small entity form (NRC Form 526) with the NRC each fiscal year to qualify for reduced fees in that year. Because a licensee's ''size,'' or the size standards, may change from year to year, the invoice reflects the full fee and licensees must complete and return NRC Form 526 for the fee to be reduced to the small entity fee amount. LICENSEES WILL NOT RECEIVE A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the ''Payment Copy'' of the invoice should be mailed to the U.S. Nuclear Regulatory Commission, License Fee Team at the address indicated on the invoice.

If you have questions regarding the NRC's annual fees, please contact the license fee staff at 301–415–7554, e-mail the fee staff at *fees.resource@nrc.gov*, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR part 13.

[FR Doc. E9–4229 Filed 2–27–09; 8:45 am]

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H.R. 1/P.L. 111–5

American Recovery and Reinvestment Act of 2009 (Feb. 17, 2009; 123 Stat. 115)

Last List February 6, 2009

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When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

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