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

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

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 74, No. 93

Friday, May 15, 2009

Agriculture Department
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Rural Utilities Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22881

Air Force Department
NOTICES
Privacy Act; Systems of Records, 22901

Antitrust Division
NOTICES
Proposed Final Judgment and Competitive Impact Statement:
United States v. Consolidated Multiple Listing Service, Inc., 22965–22976

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22935–22936

Centers for Medicare & Medicaid Services
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22932–22934

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22934–22935

Coast Guard
RULES
Safety Zones:
Ocean City Air Show, Atlantic Ocean, Ocean City, MD, 22830–22832
Underwater Object, Massachusetts Bay, MA, 22828–22830

Commerce Department
See Foreign–Trade Zones Board
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22882–22883

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement List; Additions and Deletions, 22891–22893

Defense Department
See Air Force Department
See Defense Information Systems Agency
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22931
Federal Advisory Committee Charter Modification, 22893–22894
Meetings:
Board of Visitors; Correction, 22895
Defense Policy Board Advisory Committee, 22896
Defense Science Board , 22895
National Security Education Board Group of Advisors; Correction, 22895–22896
U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee, 22894–22895
Privacy Act; Systems of Records, 22896–22898
U.S. Court of Appeals for the Armed Forces Proposed Rules Changes, 22898–22900

Defense Information Systems Agency
NOTICES
Privacy Act; Systems of Records, 22901–22903

Department of Transportation
See Pipeline and Hazardous Materials Safety Administration

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22903–22905
Developing Hispanic-Serving Institutions Program; Applications for New Awards (FY 2009), 22905–22909
Waivers Granted under Section 9401 of the Elementary and Secondary Education Act (1965), 22909–22913

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Approval and Promulgation of Implementation Plans:
New Jersey Reasonable Further Progress Plans, Reasonably Available Control Technology, Reasonably Available Control Measures and Conformity Budgets, 22837–22840
Final Tolerance Revocations:
Carbofuran, 23046–23095
PROPOSED RULES
Transportation Conformity Rule PM 2.5 and PM 10 Amendments, 23024–23043
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22922–22924
Environmental Impact Statements; Availability, etc.:
Comments Availability, 22924–22925
Weekly Receipt, 22925

Executive Office of the President
See Presidential Documents

Export–Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22925–22927
Meetings:
Advisory Committee, 22928

Federal Aviation Administration
RULES
Amendment of Class E Airspace:
Coleman, TX, 22821
Fulton, MO, 22820
Drug Enforcement Assistance; OMB Approval of Information Collection, 22819–22820
Security Related Considerations in the Design and Operation of Transport Category Airplane; Correction, 22819
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee, 23004–23005
Petitions for Exemption; Summary of Petitions Received, 23005

Federal Energy Regulatory Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22913–22914
Applications:
Alabama Power Co., 22917
Duke Energy Indiana, Inc., 22914–22915
Hydrodynamics, Inc., 22915–22916
Marine Power & Water, Inc., 22915
Slatersville Hydro, LLC, 22916–22917
Environmental Impact Statements; Availability, etc.:
Dominion Cove Point LNG, LP, 22919–22920
El Paso Natural Gas Co., 22917–22919
Filings:
Argus Media, Inc., 22921
Holland, MI et al., 22920–22921
ISO New England, Inc., 22921
Initial Market-Based Rate Filing:
Falcon Energy, LLC, 22921–22922
Motion to Brief the Commission:
Kentucky Utilities Co. et al., 22922
Rate Election:
Crosstex North Texas Pipeline, L.P., 22922

Federal Highway Administration
NOTICES
Environmental Impact Statements, Availability, etc.:
St. John the Baptist and St. James Parishes, Louisiana, 23003–23004

Federal Housing Enterprise Oversight Office
PROPOSED RULES
Privacy Act Implementation, 22842–22847

Federal Housing Finance Board
PROPOSED RULES
Federal Home Loan Bank Membership for Community Development Financial Institutions, 22848–22867
Privacy Act Implementation, 22842–22847

Federal Housing Financing Agency
PROPOSED RULES
Federal Home Loan Bank Membership for Community Development Financial Institutions, 22848–22867
Privacy Act Implementation, 22842–22847

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 22929

Federal Reserve System
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22928–22929

Fiscal Service
NOTICES
Privacy Act; Systems of Records, 23006–23021

Fish and Wildlife Service
PROPOSED RULES
Endangered and Threatened Wildlife and Plants:
Reclassification of the Oregon Chub From Endangered to Threatened, 22870–22880
Subsistence Management Regulations for Public Lands in Alaska, etc., 22867–22870
NOTICES
Endangered and Threatened Species Permit Applications, 22957–22958

Food and Drug Administration
RULES
New Animal Drugs:
Gentamicin and Betamethasone Spray, 22821–22822
NOTICES
Meetings:
Pediatric Advisory Committee, 22941–22942
Request for Nominations for Voting Consumer Representative Members on Public Advisory Committees, 22942
Small Entity Compliance Guides:
Health Claims; Calcium and Osteoporosis, and Calcium, Vitamin D, and Osteoporosis; Availability, 22942–22943

Foreign–Trade Zones Board
NOTICES
Proposal for Changes to the Format of Annual Reports, 22888–22891

Forest Service
PROPOSED RULES
Subsistence Management Regulations for Public Lands in Alaska, etc., 22867–22870
NOTICES
Meetings:
Ravalli County Resource Advisory Committee, 22882

General Accountability Office
NOTICES
Appointments to the Medicare Payment Advisory Commission, 22929–22930

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22930–22931

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Scales; Accurate Weights, Repairs, Adjustments or Replacements After Inspection, 22841–22842

Health and Human Services Department
See Centers for Disease Control and Prevention

See Centers for Medicare & Medicaid Services
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Hospital Preparedness Program, 22931–22932

Health Resources and Services Administration
NOTICES
Meetings:
National Advisory Committee on Rural Health and Human Services, 22940–22941

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
See Federal Housing Enterprise Oversight Office
RULES
Real Estate Settlement Procedures Act (RESPA):
Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs, etc., 22822–22826
NOTICES
Grants and Cooperative Agreements:
Federal Properties Suitable as Facilities to Assist the Homeless, 22943–22954

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22954–22955

International Trade Administration
NOTICES
Antidumping:
Certain Hot-Rolled Carbon Steel Flat products from Thailand, 22885–22887
Certain Welded Carbon Steel Pipe and Tube from Turkey, 22883–22885

International Trade Commission
NOTICES
Investigations:
Certain Adjustable Keyboard Support Systems and Components, 22963
Certain Automotive Parts, 22964
Certain Prepregs, Laminates, and Fishished Circuit Boards, 22964–22965

Justice Department
See Antitrust Division

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 22955–22957
Environmental Impact Statements; Availability, etc.:
Mona to Oquirrh Transmission Corridor Project and Draft Pony Express Resource Management Plan Amendment, UT, 22960–22961
Meetings:
Wild Horse and Burro Advisory Board, 22962–22963

Merit Systems Protection Board
NOTICES
Membership of the Merit Systems Protection Board's Senior Executive Service; Performance Review Board, 22977

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22931
Establishment of a NASA Advisory Committee, Pursuant to the Federal Advisory Committee Act, etc., 22977

National Archives and Records Administration
NOTICES
Nixon Presidential Historical Materials:
Opening of Materials, 22977–22978

National Institute of Standards and Technology
NOTICES
Meetings:
Malcolm Baldrige National Quality Award Board of Overseers, 22887
Visiting Committee on Advanced Technology, 22887

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Hydrographic Services Review Panel (Via Conference Call), 22887–22888

National Park Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Carter G. Woodson Home National Historic Site, DC, 22959–22960
Effigy Mounds National Monument, IA, 22961–22962
Rock Creek Park, Washington, DC, 22958–22959
Meetings:
Boston Harbor Islands National Recreation Area Advisory Council, 22963

Navy Department
NOTICES
Environmental Impact Statements; Availability, etc.:
TRIDENT Support Facilities Explosives Handling Wharf, Naval Base Kitsap–Bangor, Silverdale, Kitsap County, WA, 22900–22901

Nuclear Regulatory Commission
NOTICES
Applications:
Arizona Public Service Co.; Palo Verde Nuclear Generating Station, Units 1, 2, and 3, 22978–22981
Tennessee Valley Authority; Watts Bar Nuclear Plant (Unit 2), 22981–22985
Issuance of Regulatory Guide, 22985–22986

Office of Federal Housing Enterprise Oversight
See Federal Housing Enterprise Oversight Office

Pension Benefit Guaranty Corporation
RULES
Benefits Payable in Terminated Single-Employer Plans:
Interest Assumptions for Valuing and Paying Benefits, 22826–22828

Pipeline and Hazardous Materials Safety Administration
NOTICES
Application for Special Permits, 23002–23003

Applications for Modifications of Special Permits, 23003

Postal Service
RULES
Standard Mail Volume Incentive Program (aka Summer Sale), 22835–22837

Presidential Documents
PROCLAMATIONS
Special Observances:
Jewish American Heritage Month (Proc. 8379), 23105–23108
EXECUTIVE ORDERS
Chesapeake Bay; Protection and Restoration Efforts (EO 13508), 23097–23104

Public Debt Bureau
See Fiscal Service

Railroad Retirement Board
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22986–22988

Rural Utilities Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Fitzgerald Renewable Energy, LLC, 22881–22882

Securities and Exchange Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22988–22989
Self-Regulatory Organizations; Proposed Rule Changes:
Chicago Board Options Exchange, 22991–22993
NASDAQ OMX BX, Inc., 23000–23002
NASDAQ OMX PHLX, Inc., 22990
New York Stock Exchange LLC, 22989–22990
NYSE Arca, Inc., 22990–22991, 22993–23000

Small Business Administration
NOTICES
Disaster Declarations:
Alabama, 22988

Substance Abuse and Mental Health Services Administration

NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 22936–22939
Current List of Laboratories Which Meet Minimum Standards to Engage in Urine Drug Testing for Federal Agencies, 22939–22940

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Pipeline and Hazardous Materials Safety Administration

Treasury Department
See Fiscal Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 23005–23006

Veterans Affairs Department
RULES
Expansion of Enrollment in the VA Health Care System, 22832–22835

Separate Parts In This Issue

Part II
Environmental Protection Agency, 23024–23043

Part III
Environmental Protection Agency, 23046–23095

Part IV
Presidential Documents, 23097–23104

Part V
Presidential Documents, 23105–23108

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

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CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Proclamations:
8379 23107

Executive Orders:
13508 23099

9 CFR

Proposed Rules:
201 22841

12 CFR

Proposed Rules:
913 22842
925 22848
1204 22842
1263 22848
1702 22842

14 CFR
25 22819
47 22819
61 22819
63 22819
65 22819
71 (2 documents) 22820, 22821

21 CFR
510 22821
524 22821

24 CFR
3500 22822

29 CFR
4022 22826

33 CFR
165 (2 documents) 22828, 22830

36 CFR

Proposed Rules:
242 22867

38 CFR
17 22832

39 CFR
111 22835

40 CFR
52 22837
180 23046

Proposed Rules:
93 23024

50 CFR

Proposed Rules:
17 22870
100 22867

Rules and Regulations

Federal Register
Vol. 74, No. 93
Friday, May 15, 2009

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

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 TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2006–26722; Amendment Nos. 25–127]

RIN 2120–AI66

Security Related Considerations in the Design and Operation of Transport Category Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, correction.

SUMMARY: The Federal Aviation Administration (FAA) is amending an error in its security related regulations affecting the design and operation of transport category airplanes. The paragraph that describes the incorporation by reference of a document containing ballistic resistance requirements contains an erroneous cross reference which was included in both the final rule and the notice of proposed rulemaking. This document corrects that error so that the reader is able to locate the correct information.

DATES: *Effective Date:* May 15, 2009.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact: Jeff Gardlin, FAA Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–2136; facsimile (425) 227–1149; e-mail: *jeff.gardlin@faa.gov.* For legal questions concerning this final rule contact: Gary Michel, Regulations Division, AGC–200, FAA Office of the Chief Counsel, 800 Independence Avenue, SW., Washington DC, 20591; telephone (202) 267–3148; e-mail: *gary.michel@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA published a final rule entitled ''Security Related Considerations in the Design and Operation of Transport Category Airplanes'' in the **Federal Register** on October 28, 2008 (73 FR 63867). The final rule amended security related regulations affecting the design and operation of transport category airplanes. The final rule, as published, contained an erroneous cross reference in § 25.795 that was carried over from the notice of proposed rulemaking (Notice No. 06–19, published in the **Federal Register** on January 5, 2007, 72 FR 630), which was also in error. The cross reference related to the incorporation by reference of National Institute of Justice (NIJ) Standard 0101.04, Ballistic Resistance of Personal Body Armor, June 2001, Revision A, to establish ballistic resistance as required by paragraph (b)(3) of 14 CFR 25.795. The correct reference is paragraph (a)(3).

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Correction

■ In consideration of the foregoing, the Federal Aviation Administration amends part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIPRLANES

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

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704.

§ 25.795 [Amended]

■ 2. Amend § 25.795(e), introductory text, by removing the phrase ''paragraph (b)(3)'' and adding the phrase ''paragraph (a)(3)'' in its place.

Issued in Washington, DC, on May 8, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–11235 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 47, 61, 63, and 65

[Docket No. FAA–2006–26714; Amdt. Nos. 47–28, 61–118, 63–36, and 65–51]

RIN 2120–AI43

Drug Enforcement Assistance; OMB Approval of Information Collection

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; notice of Office of Management and Budget approval for information collection.

SUMMARY: This notice announces the Office of Management and Budget's (OMB's) approval of the information collection requirement contained in the FAA's final rule, ''Drug Enforcement Assistance,'' which was published on February 28, 2008.

DATES: The FAA received OMB approval for the information collection requirements in 14 CFR 61.19(h), 14 CFR 61.19(e), 14 CFR 63.15(d) and 14 CFR 65.15(d) on October 9, 2008. The rule became effective on March 31, 2008.

FOR FURTHER INFORMATION CONTACT: John G. Bent, Civil Aviation Registry, Mike Monroney Aeronautical Center, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169; telephone (405) 954–4331.

SUPPLEMENTARY INFORMATION: On February 28, 2008, the FAA published the final rule, ''Drug Enforcement Assistance'' (73 FR 10662). Two years after this rule becomes effective, paper pilot certificates may no longer be used to exercise piloting privileges. Five years after this rule becomes effective, certain other paper airmen certificates, such as those of flight engineers and mechanics, may no longer be used to exercise the privileges authorized by those certificates. To exercise the privileges after those respective dates, the airmen must hold upgraded, counterfeit-resistant plastic certificates. Student pilot certificates, temporary certificates, and authorizations are not affected. The rule contains information collection requirements that had not yet been approved by the Office of Management and Budget at the time of publication. In the **DATES** section of the

rule, the FAA noted that affected parties did not need to comply with the information collection requirements until OMB approved the FAA's request to collect the information.

In accordance with the Paperwork Reduction Act, OMB approved that request on October 9, 2008, and assigned the information collection OMB Control Number 2120–0735. The FAA request was approved by OMB without change and expires on October 31, 2011. This notice is being published to inform affected parties of the approval of the information collection requirements of 14 CFR 61.19(h), 14 CFR 61.19(e), 14 CFR 63.15(d) and 14 CFR 65.15(d).

Issued in Washington, DC, on May 11, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–11362 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1230; Airspace Docket No. 08–ACE–1]

Amendment of Class E Airspace; Fulton, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Fulton, MO. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAPs) at Elton Hensley Memorial Airport, Fulton, MO. This action will also adjust the geographic coordinates of Elton Hensley Memorial Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Elton Hensley Memorial Airport.

DATES: *Effective Date:* 0901 UTC, August 27, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: 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:

History

On February 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Fulton, MO, adding additional controlled airspace and adjusting the geographic coordinates at Elton Hensley Memorial Airport, Fulton, MO (74 FR 8218, Docket No. FAA–2008–1230). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in that Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Fulton, MO, adding additional controlled airspace at Elton Hensley Memorial Airport, Fulton, MO, and adjusting the geographic coordinates of Elton Hensley Memorial Airport.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 adds additional controlled airspace at Elton Hensley Memorial Airport, Fulton, MO.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed 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.

* * * * *

ACE MO E5 Fulton, MO [Amended]

Fulton, Elton Hensley Memorial Airport, MO
(Lat. 38°50′17″ N., long. 92°00′09″ W.)

Guthrie NDB (FTT)
(Lat. 38°50′34″ N., long. 92°00′17″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Elton Hensley Memorial Airport and within 2.6 miles each side of the 069° bearing from the Guthrie NDB extending from the 6.5-mile radius of the airport to 7 miles northeast of the NDB, and within 2.6 miles each side of the 229° bearing from the NDB extending from the 6.5-mile radius of the airport to 7 miles southwest of the NDB.

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Issued in Fort Worth, TX, on April 24, 2009.

Roger M. Trevino,

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

[FR Doc. E9–10986 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1139; Airspace Docket No. 08–ASW–23]

Amendment of Class E Airspace; Coleman, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace at Coleman, TX. Additional controlled airspace is necessary to accommodate Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) at Coleman Municipal Airport, Coleman, TX. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at Coleman Municipal Airport.

DATES: *Effective Date:* 0901 UTC, July 2, 2009. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: 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:

History

On February 24, 2009, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace at Coleman, TX, adding additional controlled airspace at Coleman Municipal Airport, Coleman, TX (74 FR 8219, Docket No. FAA–2008–1139). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9S signed October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by amending Class E airspace at Coleman, TX, adding additional controlled airspace at Coleman Municipal Airport, Coleman, TX, for the safety and management of IFR operations.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106, 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 adds additional controlled airspace at Coleman Municipal Airport, Coleman, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, signed 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.

* * * * *

ASW TX E5 Coleman, TX [Amended]

Coleman Municipal Airport, TX
(Lat. 31°50′32″ N., long. 99°24′14″ W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Coleman Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on April 22, 2009.

Roger M. Trevino,

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

[FR Doc. E9–11259 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

[Docket No. FDA–2009–N–0665]

New Animal Drugs; Gentamicin and Betamethasone Spray

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect the original approval of an abbreviated new animal drug application (ANADA) filed by American Pharmaceuticals and Cosmetics, Inc. The ANADA provides for the veterinary prescription use of gentamicin sulfate and betamethasone valerate topical spray in dogs.

DATES: This rule is effective May 15, 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: American Pharmaceuticals and Cosmetics, Inc., 1401 Joel East Rd., Fort Worth, TX 76140, filed ANADA 200–388 that provides for veterinary prescription use of GB (gentamicin sulfate and betamethasone valerate) Topical Spray in dogs. American Pharmaceuticals and Cosmetics, Inc.'s GB Topical Spray is

approved as a generic copy of Schering-Plough Animal Health Corp.'s GENTOCIN Topical Spray, approved under NADA 132–338. The ANADA is approved as of April 7, 2009, and the regulations are amended in 21 CFR 524.1044f to reflect the approval.

In addition, American Pharmaceuticals and Cosmetics, Inc., is not currently listed in the animal drug regulations as a sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to add entries for this sponsor.

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

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

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 parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1), alphabetically add an entry for ''American Pharmaceuticals and Cosmetics, Inc.''; and in the table in paragraph (c)(2), numerically add an entry for ''065531'' to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
* * *	* *
American Pharmaceuticals and Cosmetics, Inc., 1401 Joel East Rd., Fort Worth, TX 76140	065531
* * *	* *

(2) * * *

Drug labeler code	Firm name and address
* *	* * *
065531	American Pharmaceuticals and Cosmetics, Inc., 1401 Joel East Rd., Fort Worth, TX 76140
* *	* * *

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 524 continues to read as follows:

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

§ 524.1044f [Amended]

■ 4. In § 524.1044f, in paragraph (b), remove ''and 058829'' and in its place add ''058829, and 065531''.

Dated: May 8, 2009.

William T. Flynn,

Acting Director, Center for Veterinary Medicine.

[FR Doc. E9–11368 Filed 5–14–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3500

[Docket No. FR–5180–F–06]

RIN 2502–AI61

Real Estate Settlement Procedures Act (RESPA): Rule To Simplify and Improve the Process of Obtaining Mortgages and Reduce Consumer Settlement Costs; Withdrawal of Revised Definition of ''Required Use''

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule withdraws the revisions to the definition of ''required use'' as provided in HUD's November 17, 2008, final rule amending its Real Estate Settlement Procedures Act (RESPA) regulations. The November 17, 2008, final rule, in part, revised the existing definition of ''required use,'' for the purpose of enhancing protections for consumers from deceptive mortgage practices that result from certain affiliated business transactions. The revised definition of ''required use'' had been scheduled to become effective on January 16, 2009. On January 15, 2009, and March 10, 2009, HUD published final rules delaying the effective date of the definition of ''required use.'' The March 10, 2009, final rule provides for an effective date of July 16, 2009. The March 10, 2009, rule also solicited comment on whether HUD should withdraw the revised definition of ''required use'' and, if so, whether HUD should initiate new rulemaking on the subject. HUD has taken into consideration the public comments received and has decided to withdraw the revised ''required use'' definition. HUD therefore leaves in place the definition of ''required use'' before the revisions made by the November 17, 2008, final rule. HUD remains committed to the RESPA reform goals of the November 17, 2008, final rule and concerned about some of the practices reported by commenters, and will initiate a new rulemaking process on required use.

DATES: *Effective Date:* June 15, 2009, except the amendment to 24 CFR 3500.2, which is effective July 16, 2009.

FOR FURTHER INFORMATION CONTACT: Ivy Jackson, Director, or Barton Shapiro, Deputy Director, Office of RESPA and Interstate Land Sales, Office of Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 9158, Washington, DC 20410–8000; telephone 202–708–0502 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 17, 2008 (73 FR 68204), HUD published a final rule amending its regulations in 24 CFR part 3500 to further the purposes of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2601–2617) by requiring more timely and effective disclosures related

to mortgage settlement costs for federally related mortgage loans to consumers. The final rule followed publication of a March 14, 2008, proposed rule (73 FR 14030) and made changes in response to public comment and further consideration of certain issues by HUD. Additional information regarding the RESPA regulatory amendments, and specifically changes made by HUD subsequent to the proposed rule, is provided in the preamble to the November 17, 2008, final rule.

The November 17, 2008, final rule became effective on January 16, 2009, but provided a longer transition period for the majority of the new requirements. Other provisions, however, were scheduled to become applicable on January 16, 2009. Among regulatory changes identified as being applicable upon the effective date of January 16, 2009, is the revised definition of the term ''*required use.*'' The revision of that definition became the subject of litigation, following issuance of the final rule. (See *National Association of Home Builders, et al.* v. *Shaun Donovan, et al.,* Civ. Action No. 08–CV–1324, United States District Court for the Eastern District of Virginia, Alexandria Division.)

HUD issued a final rule on January 15, 2009 (74 FR 2369) that deferred the effective date of the revised definition of ''required use'' for an additional 90 days until April 16, 2009. On March 10, 2009 (74 FR 10172), HUD published a final rule further delaying the applicability date of the revised definition of ''required use'' until July 16, 2009. The effective and applicability dates of the remaining provisions of the November 17, 2008, final rule were not affected by the January 15, 2009, and March 10, 2009, final rules, and they are not affected by this final rule.

During this time HUD reviewed the provisions on ''required use'' and, through the March 10, 2009, rule also solicited public comment on whether HUD should withdraw the definition, as promulgated in the November 17, 2008, final rule, for the purpose of further evaluating the scope and operation of the required use provision, and on initiating new rulemaking.

II. This Final Rule—Withdrawal of the Definition of ''Required Use''

This final rule withdraws the revisions to the definition of ''required use'' made by HUD's November 17, 2008, final rule, and leaves in place the definition codified in the RESPA regulations at 24 CFR 3500.2 prior to that revision.[1] HUD remains committed to the goals of RESPA reform and concerned about affiliated business practices that interfere with consumer choice. Therefore, HUD will initiate new rulemaking to address RESPA's prohibitions on required uses.

The proposal to withdraw the ''required use'' definition was of significant public interest. HUD received over 1,200 comments in response to the solicitation of public comments. The comments were highly informative and highlighted, among other things, the potential complexity of the affiliated business requirements and the need for further clarity on the application of ''required use''. The comments also underscored the need for HUD to continue to pursue reform in this area.

Based upon HUD's further evaluation of affiliated business arrangements, and HUD's review of the comments, HUD determined that its revised definition of ''required use'' did not strike the right balance between HUD's goals of enhancing consumer protection consistent with the statutory scheme of RESPA and providing needed guidance to industry participants. Through this final rule, HUD is therefore withdrawing the revised definition of ''required use,'' and leaving in place the definition currently codified in 24 CFR 3500.2. It is HUD's view that, especially given the attention focused on HUD's concerns through this rulemaking, the prior definition of ''required use'' can be used to address some deceptive referral arrangements, even though it does not achieve the enhanced consumer protections that HUD sought with respect to mortgages involving affiliated business arrangements. HUD will continue to seek consumer protections, especially as mortgage products continue to change, often becoming more complex and challenging buyers' understanding of the costs and nature of mortgage transactions. HUD is not abandoning its goal of providing greater protections to consumers in real estate settlement transactions, but remains open to different means of achieving this goal.

New rulemaking offers HUD the opportunity to present a new proposal based upon its reevaluation of the required use provision in the affiliated business contexts, including the development of analysis in support of a new proposal, as well as applied in its various contexts in the RESPA regulations, and as further informed by the public comments received on the March 10, 2009, rule. New rulemaking will allow HUD to further refine its regulations on practices that are prohibited under other RESPA provisions. At the same time, HUD believes better success will be achieved by providing consumers, industry, and other interested members of the public the further opportunity for input into this area of RESPA reform.

III. Discussion of the Public Comments Received on the March 10, 2009, Final Rule

The public comment period on the March 10, 2009, rule closed on April 9, 2009. HUD received over 1,200 comments on withdrawal of the revised definition of ''required use''. Comments were submitted by mortgage servicers, homebuilding companies, builder-affiliated mortgage and settlement service providers, real estate and mortgage professional associations, and consumers. Many of the comments were form letters from members of industry organizations, with multiple commenters registering nearly identical comments and concerns.

The March 10, 2009, rule sought comments on the withdrawal or non-withdrawal of the revised definition of ''required use''. Some comments submitted in response to the March 19, 2009, final rule addressed other aspects of RESPA, however; for example, suggesting other changes to HUD's RESPA regulations or disclosure forms. Comments submitted on other aspects of the November 17, 2008, final rule, or RESPA reform, are outside the scope of the March 10, 2009, rulemaking and are not addressed in this final rule.

The summary of comments that follows presents the major issues and questions raised by the public commenters on the withdrawal of the revised definition of ''required use''. The summary is organized in two sections. The first section summarizes the comments opposed to withdrawal of the required use revision, and the second section summarizes those comments supporting withdrawal. Due to the similarity and overlap of the issues raised by commenters, HUD has provided a consolidated response at the end of the description of the public comments.

[1] Note that the definition of ''required use'' in the November 17, 2008, final rule did not take effect on January 16, 2009, and has not taken effect. As a result, the definition of ''required use'' currently codified in HUD's RESPA regulations at 24 CFR 3500.2 has remained the applicable definition pending the revised definition's effective date. With HUD's withdrawal of the definition set forth in the November 17, 2008, final rule, the codified definition continues to be the applicable one.

A. Comments Opposed to Withdrawal of Required Use Definition

Comment: Revised ''required use'' provision is needed to promote competition. Of those commenters opposing withdrawal, the overwhelming basis cited is the absence of needed competition that would result if the revised definition of ''required use'' were withdrawn. The commenters wrote that homebuilders have established a system that restricts buyers to the use of mortgage lenders owned by or affiliated with the builders, thereby eliminating the choices available to consumers. Commenters stated that this practice of linking incentives to the use of certain lenders discourages consumers from shopping for service providers and, since closing is some time in the future, the buyer cannot determine at the time of application whether the interest rate of the mortgage offered in exchange for the incentive will be competitive. Commenters stated that the cost of giving up the incentives agreed to at the time of application may be too great for a buyer to bear even though the loan rate at the time it is locked turns out to be unfavorable. Commenters wrote that often buyers do not have sufficient knowledge to select an appropriate lender and are at the mercy of the builder; that buyers are not skilled enough in real estate transactions to realize they are being taken advantage of.

The commenters wrote that the revised definition of ''required use'' in the November 17, 2008, final rule would preclude these practices and promote competition beneficial to homebuyers. The commenters wrote that while, on their face, the incentives are worth many thousands of dollars, they are actually priced into the cost of the home and permit the lender to charge higher rates or fees. The commenters stated that often the incentives are recouped in the home sales price or the loan rate without disclosing it to the consumer, with the result that consumers have been overpaying for homes and mortgages without realizing it. The commenters stated that the rates offered by the builder-affiliated lender are typically significantly higher than what the borrower would obtain from free market shopping.

The commenters opposing withdrawal wrote that if builder-affiliated lenders were really offering competitive terms, they would not need to offer incentives that ''force'' the client to the affiliated lender. The commenters also wrote that the purpose of RESPA is to protect the public and allow them to shop for the best services and prices. The commenters stated that a delay in implementation of the required use provision would defeat this statutory purpose.

Comment: The revised ''required use'' definition is needed to prevent conflict of interest and similar abuses. Several commenters wrote that allowing required services in exchange for incentives not only excludes competition, but results in borrowers signing with certain lenders, even though other lenders offer lower rates, which is a practice that is unethical, ''collusion,'' ''anti-competitive,'' and ripe for abuse and fraud. The commenters wrote that it is a conflict of interest to have a builder-owned mortgage company financing the builders' own homes, and for an incentive offered by a builder to require a borrower to use a certain lender. The commenters stated that often the builder is not actually providing the consumer with a discount because the cost of the incentives is buried in the loan rate or the cost of the home. The commenters wrote that the unethical features of this arrangement are underscored by the fact that the builder does not disclose to the buyer until closing that the use of a specific, higher-rate lender is required. The commenters stated that the disclosure is sometimes buried in unclear contract language. The commenters stated that this practice has resulted in borrowers getting loans with higher rates, resulting in greater numbers of foreclosures.

Comment: The practice of linking builder incentives to the use of an affiliated mortgage company is unfair to other lenders. The commenters stated that even if buyers would prefer another lender, once they are presented with an incentive, they feel they must use the builder's ''joint venture'' lender or the incentive will be withdrawn. Several lenders commented that they often lose business to other lenders because of these incentives. Commenters stated that the tradeoff is unfair both to buyers because of the higher loan costs and to lenders who cannot compete with the builder's arrangement. Another commenter wrote that builder-affiliated lenders typically employ marginal loan officers that are merely order-takers and do not possess the education, experience, or knowledge to competently evaluate a potential borrower's financial situation, further jeopardizing the opportunity for consumers to choose a beneficial mortgage product.

The commenters stated that buyers should be able to keep the incentives and also choose their lender. One commenter wrote that these incentives are an ''injustice'' and a ''restraint of trade.'' Other commenters stated that builders are in control of every aspect of the transaction and are using these incentives simply to make more money, without actually providing a benefit to consumers contrary to advertisement. Commenters urged HUD to make home buying a fair playing field for consumers and lenders, and force builders to follow the same rules that other parties to the real estate transaction must follow.

B. Comments Supportive of Withdrawal of Revised Definition of ''Required Use''

Comment: The revised required use provision would destroy homebuilder-affiliate business model and corresponding builder forward commitments. Many commenters wrote that the required use provision would unnecessarily destroy the homebuilder-affiliate business model, driving many builder-affiliated lenders out of business. The commenters wrote that one of the incentives most frequently offered is the buying down of interest rates through the purchase of forward commitments. In exchange for a fee, the homebuilder buys down the interest rates in the commitments to present attractive financing to their customers. Because commitments are expensive and require that a significant number of the homebuilder's customers use the lender, homebuilders limit the companies they purchase commitments from to their affiliates. The commenters wrote that the revised required use provision would prohibit homebuilders from purchasing forward commitments from affiliates, but would not prohibit these arrangements with unaffiliated lenders. In consequence, the final rule would terminate the ability of builders to help consumers obtain competitively priced credit.

In a similar vein, commenters stated that the revised required use provision would preclude homebuilders from offering other incentives to customers who use affiliated lenders—such as closing cost credits and home upgrades—unless homebuilders offer the incentives regardless of the settlement service provider. The commenters wrote that the joint business model depends on the ability to offer incentives to encourage the use of affiliates. According to the commenters, many affiliated lenders do not otherwise advertise or market their products to the general public. The commenters wrote that affiliated lenders who are not designed to compete on the open market would lose considerable business as a result of the revised required use provision.

Comment: The revised definition of ''required use'' creates an unintended loophole that decreases rather than increases consumer protections. Some commenters stated that the revised definition of ''required use'' is worded in a confusing way that provides builders with a ''loophole'' that would decrease, rather than increase, consumer protections and competition. This loophole, according to a commenter, allows builders to set up their own mortgage company and offer incentives through that company, and thereby escape the oversight and protections sought by HUD's revised definition of ''required use.'' Commenters wrote that a definition of ''required use'' should clearly state that borrowers are allowed to shop for settlement services free of any influence from the builder and that incentives should be offered regardless of the customer's choice for mortgage or title services.

Other commenters wrote that HUD failed to analyze the potential impact of the new definition of ''required use'' and that the revised definition engenders a more confusing, less transparent loan origination process that will discourage consumer free choice. Commenters urged HUD to draft a more narrowly focused definition that would not prohibit builders, real estate brokers and others from offering genuine incentives to customers. The commenters stated their support for withdrawal of the revised definition of ''required use'' but also stated their support for HUD to continue to pursue reform in this area.

Comment: The revised definition of ''required use'' lacks the necessary foundational support for the change to the definition of ''required use''. Some commenters wrote that the revised definition of ''required use'' is based solely on anecdotal evidence, and not supportable data. The commenters disagreed with HUD's statements that homebuilder-affiliated lenders may not offer the best products and services, that their fees may be higher than their competitors, and that the transactions are too complicated for borrowers to calculate the value of the package deal they receive when using an affiliated lender. The commenters wrote that the justifications offered by HUD were ''incomplete, confusing, inaccurate, and/or based upon flawed reasoning or suspect evidence.''

Definition of ''required'' is contrary to the term's plain meaning under RESPA. Some commenters wrote that the revised definition of ''required use'' is contrary to the plain meaning of the words in the RESPA statute itself because defining ''required use'' to mean any incentive offered to a buyer to use an affiliated company contradicts the unambiguous meaning of the statutory term ''required.'' The commenters wrote that HUD should not confuse legitimate incentive arrangements with undue influence of required use of a product or service. The commenters also wrote that the required use provision contradicts the mandate of Section 8(c) of RESPA that the only criteria that may be imposed on affiliated business arrangements are those contained in the statute.

The revised definition of ''required use'' is beyond the scope of HUD's authority. Some commenters wrote that HUD should withdraw the definition of ''required use'' because the revised definition is beyond the scope of HUD's authority under RESPA. The commenters wrote that RESPA prohibits agency restrictions on affiliated business associations except those contained in the statute itself. The commenters wrote that HUD's rulemaking authority extends only to interpret RESPA, to implement the statute, and to grant exemptions that broaden the permissibility of certain behavior. According to the commenters, Congress did not give HUD the power to prescribe additional restrictions, which HUD did in its revision to the definition of ''required use,'' and therefore the revised definition is invalid. The commenters wrote that RESPA prohibits any limitation on affiliated business association other than requiring that a proper disclosure is given, the person is not required to use a particular settlement service provider, and nothing of value is received other than payments permitted under RESPA. The commenters wrote that RESPA demonstrates that Congress intended to favor affiliated business arrangements in nearly every manifestation.

Comment: Revised required use provision unfairly targets homebuilders. Several commenters objected to the required use provision on the basis that it unfairly singles out homebuilders from all other entities involved in the sale and financing of real estate. The commenters wrote that the rule would not prohibit lenders from offering incentives to homebuyers who use an affiliated title company. Similarly, the commenters stated, real estate agents would be able to offer incentives to homebuyers that use the agent's affiliated lender or title company. The commenters wrote that consumers should not be denied access to the legitimate incentives offered by builder-affiliated lenders because of a few unscrupulous lenders and builders. The commenters wrote that there is no rational basis to support the proposition that homebuilders should be treated differently from other entities.

Comment: Builder affiliated lender model has efficiencies which are passed on to consumers. Commenters supporting withdrawal stated that affiliated lenders can assist and create efficiencies that result in discounts in a complex transaction that non-affiliated lenders cannot always handle in a timely manner because of their lack of experience with new home sales. These commenters emphasized the convenience of ''one stop shopping'' as a significant consumer benefit that will be eliminated unless HUD withdraws the revised definition of ''required use.'' The commenters wrote that rather than a consumer having to deal with multiple settlement service providers, affiliated providers coordinate the home purchase process by finding a loan which they underwrite and ensure that the funding will be ready at the closing date selected by the builder and buyer. The commenters wrote that consumers receive better service from affiliated lenders because of the efficiencies resulting from the relationship with the builder, the linked communication systems and standardized policies, and the lender's own desire to obtain repeat business and recommendations. Because affiliated lenders work with high volumes of transactions, they have proven controls that ensure a complete, fast, and fair transaction. Affiliated lender commenters wrote that because of their affiliation, they have been able to help borrowers who have had problems with other lenders or who needed to close quickly. The commenters wrote that post-closing surveys show a customer satisfaction rate of 90 percent with affiliates.

Comment: Affiliated companies help prevent mortgage fraud. Commenters wrote that when outside lenders are involved, the potential for mortgage fraud is greater than when consumers use affiliated companies because the outside lender's personnel are often not as well trained as the personnel of affiliated lenders. Commenters stated that because of their lack of affiliation, outside lenders do not have as great a motivation to prevent fraud as do affiliated lenders. The commenters stated that in affiliated relationships, both entities can work together to prevent mortgage fraud.

C. HUD Response to the Public Comments

HUD appreciates all the comments submitted in response to the solicitation of comment in the March 10, 2009, rule, on the proposal to withdraw the revised

''required use'' definition in the November 17, 2008, final rule. HUD reviewed and gave careful consideration to all views expressed. Following consideration of the comments and HUD's further evaluation of the definition and application of ''required use'' HUD has decided to withdraw the revised definition and, leave in place the definition of ''required use'' as found in HUD's codified regulations in 24 CFR 3500.2, and which has remained in effect since the revised definition of ''required use'' in the November 17, 2008, final rule, had not taken effect.

HUD reiterates its commitment to fair real estate settlement practices that are not misleading, prevent abuse, offer proper disclosures to homebuyers, and promote choice and competition. HUD's intent in revising the definition of ''required use'' was to clarify its interpretation of RESPA's requirements with respect to transactions involving affiliated businesses in order to promote more competition among settlement service providers. After further evaluation and consideration of the concerns voiced by consumers and industry participants from various fields about the application of the revised definition of ''required use,'' HUD has concluded that all would benefit by HUD withdrawing the revised definition and addressing ''required use'' through new rulemaking.

HUD recognizes that the affiliations of businesses involved in complex home purchase transactions can themselves be complex arrangements, and that consumers may have difficulty understanding whether there is value in using affiliated businesses in mortgage transactions. HUD has determined that further development of the concept of ''required use'' is necessary to assure that, especially in the affiliated business context, its application protects consumers by eliminating abusive practices that increase costs for unsuspecting consumers. The comments submitted in response to the March 10, 2009, rule provide HUD with a good starting point for going forward on this issue. Consumers and industry and the public generally will have further opportunity to offer feedback when HUD issues a new proposed rule on this subject.

Although HUD is withdrawing the revised definition of ''required use,'' a definition of ''required use'' remains part of HUD's RESPA regulations. That definition, which focuses its discount language on settlement services, is the one that was in place in HUD's RESPA regulations prior to HUD's issuance of the November 17, 2008, final rule, and which has remained in place since the revised definition of ''required use'' never took effect. Additionally, although HUD is withdrawing the revised definition of ''required use'', the withdrawal should not be interpreted to signal any lessening of HUD oversight or enforcement of existing statutory and regulatory provisions in this area. HUD interprets its definition generally as aiming to distinguish the features of legitimate incentives and discounts offered to consumers from those that may result in undisclosed or higher costs to consumers. The public comments on this subject underscore the need for greater attention to and understanding of the treatment of discounts to consumers under RESPA and HUD's RESPA regulations.

With respect to the more specific issues expressed by commenters on the subject of ''required use'', HUD will defer further discussion of such issues to any new rulemaking. Generally, however, HUD notes that it revised the definition of ''required use'' to more effectively realize Congress's intent in passing RESPA. RESPA's principal goal is consumer protection. RESPA provides HUD with the requisite authority to promulgate a revised definition of ''required use'' that meets the goals of RESPA and HUD's mandate to enforce RESPA. Today's final rule will enable HUD to reconsider all of the issues involved in the application of the required use concept and to better craft requirements and limitations that address the valid concerns raised in the preceding rulemaking.

IV. Findings and Certifications

Federalism Impact

This rule does not have Federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt State law within the meaning of Executive Order 13132 (entitled ''Federalism'').

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and on the private sector. This rule does not, within the meaning of the UMRA, impose any Federal mandates on any state, local, or tribal governments nor on the private sector.

List of Subjects in 24 CFR Part 3500

Consumer protection, Condominiums, Housing, Mortgagees, Mortgage servicing, Reporting and Recordkeeping requirements.

■ Accordingly, 24 CFR part 3500 is amended as follows:

PART 3500—REAL ESTATE SETTLEMENT PROCEDURES ACT

■ 1. The authority citation for part 3500 continues to read as follows:

Authority: 12 U.S.C. 2601 *et. seq:* 42 U.S.C. 3535(d).

■ 2. Section 3500.1(b)(1) is revised to read as follows:

§ 3500.1 Designation and applicability.

* * * * *

(b) * * *

(1) Sections 3500.8(b), 3500.17, 3500.21, 3500.22 and 3500.23, and Appendices E and MS–1 are applicable commencing January 16, 2009.

* * * * *

■ 3. Effective July 16, 2009, in § 3500.2, revise the definition of ''*Required use''* to read as follows:

§ 3500.2 Definitions.

* * * * *

Required use means a situation in which a person must use a particular provider of a settlement service in order to have access to some distinct service or property, and the person will pay for the settlement service of the particular provider or will pay a charge attributable, in whole or in part, to the settlement service. However, the offering of a package (or combination of settlement services) or the offering of discounts or rebates to consumers for the purchase of multiple settlement services does not constitute a required use. Any package or discount must be optional to the purchaser. The discount must be a true discount below the prices that are otherwise generally available, and must not be made up by higher costs elsewhere in the settlement process.

* * * * *

Dated: May 7, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–11383 Filed 5–12–09; 4:15 pm]

BILLING CODE 4210–67–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4022

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

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Pension Benefit Guaranty Corporation's regulation on Benefits Payable in Terminated Single-Employer Plans prescribes interest assumptions for valuing and paying certain benefits under terminating single-employer plans. This final rule amends the benefit payments regulation to adopt interest assumptions for plans with valuation dates in June 2009. Interest assumptions are also published on PBGC's Web site (*http://www.pbgc.gov*).

DATES: Effective June 1, 2009.

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

SUPPLEMENTARY INFORMATION: PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

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

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

This amendment (1) adds to Appendix B to Part 4022 the interest assumptions for PBGC to use for its own lump-sum payments in plans with valuation dates during June 2009, and (2) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using PBGC's historical methodology for valuation dates during June 2009.

The interest assumptions that PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 3.75 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent an increase (from those in effect for May 2009) of 0.25 percent in the immediate annuity rate and are otherwise unchanged. For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

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

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2009, PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

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

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

List of Subjects in 29 CFR Part 4022

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

■ In consideration of the foregoing, 29 CFR part 4022 is amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

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

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

■ 2. In appendix B to part 4022, Rate Set 188, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*	*	*	*	*	*		
188	6–1–09	7–1–09	3.75	4.00	4.00	4.00	7	8

■ 3. In appendix C to part 4022, Rate Set 188, as set forth below, is added to the table.

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

* * * * *

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
* * * * * * *								
188	6–1–09	7–1–09	3.75	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 7th day of May 2009.

Vincent K. Snowbarger,

Acting Director, Pension Benefit Guaranty Corporation.

[FR Doc. E9–11373 Filed 5–14–09; 8:45 am]

BILLING CODE 7709–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–1272]

RIN 1625–AA00

Safety Zone; Underwater Object, Massachusetts Bay, MA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is extending the duration of a temporary safety zone surrounding the location of the sunken fishing vessel PATRIOT located approximately 17 miles northeast of Scituate, Massachusetts in Massachusetts Bay. This action is necessary to ensure that vessels are not endangered by conducting dredging, diving, anchoring, fishing or other activities in this area. This temporary rulemaking is needed to protect the environment, the commercial fishing industry, and the general public from potential hazards associated with the underwater object and from the hazards associated with planned salvage of the vessel.

DATES: This rule is effective from 11:59 p.m. March 14, 2009 through midnight May 20, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2008–1272 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2008–1272 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying two locations: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Chief Eldridge McFadden, United States Coast Guard, Sector Boston, Waterways Management Division; telephone 617–223–5160, e-mail *Eldridge.C.McFadden@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because initial immediate action was needed to protect the public from the hazards posed by an unknown underwater object located in Massachusetts Bay. This object was later identified as the F/V Patriot. The F/V PATRIOT is located in approximately 95 feet of water 17 miles northeast of Scituate, Massachusetts. This rule extends the duration of the existing safety zone, which would have expired on May 6, 2009, to ensure, to the extent practicable, the immediate, continued protections for the environment, the commercial fishing industry, and the general public from the hazards associated with the F/V PATRIOT, while investigative efforts continue, risk mitigation strategies are further explored and implemented, and salvage efforts are conducted. Specifically, this rule is being extended to facilitate and protect planned commercial salvage operations, which were unable to be completed during the prior extension. It would be contrary to the public interest for the existing safety zone to lapse on the eve of such operations.

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

Background and Purpose

On January 3, 2009, the F/V PATRIOT, a 54-foot steel-hull boat, sank with the loss of two crewmembers onboard. The vessel was reported to have an estimated 5000 gallons of fuel onboard. There were no survivors and the exact position of the vessel was not immediately known. On January 8, 2009, the Coast Guard established a temporary safety zone around a reported underwater object believed to be the F/V PATRIOT, located in Massachusetts Bay approximately 17 miles northeast of Scituate, Massachusetts, in position 42°24′27.34″ N, 70°27′17.23″ W. This underwater object created an immediate and significant danger to the environment, the commercial fishing industry, and the general maritime public, as mariners unaware of its presence could make contact with the object and cause damage to their vessel, equipment below the water or fishing gear. On January 14, 2009, the Coast Guard extended the temporary safety zone until March 14, 2009, while investigative efforts continued and risk mitigation strategies were further explored.

On January 23, 2009, underwater exploratory operations with photographic equipment confirmed that the object was the F/V PATRIOT. The owners of the vessel intend to conduct dive and salvage operations on the vessel. On April 14, 2009, the Coast Guard received a request to extend the safety zone until May 6, 2009 in order to conduct a salvage operation for the vessel. On May 6, 2009, the Coast Guard received an additional request to extend the safety zone as the operations had not yet been started. The Coast Guard has agreed to this extension of this zone, which will help ensure the planned dive and salvage operations can be conducted safely.

Discussion of Rule

This regulation extends the duration of the temporary safety zone on the navigable waters of Massachusetts Bay, Massachusetts, 17 miles northeast of Scituate, Massachusetts. This extension is necessary to allow the owners of the F/V PATRIOT to conduct salvage operations. The first safety zone, on this matter, was effective from January 8, through January 14, 2009. On January 14, 2009, the duration of the zone was extended until March 14, 2009 (74 FR 7817). A second extension was authorized on March 6, 2009 and published in the **Federal Register** (74 FR 14729) extending the duration of the safety zone from March 14, 2009 through April 28, 2009. A third extension was authorized on April 24, 2009 extending the duration of the safety zone through midnight, May 6, 2009. This regulation extends the duration of the safety zone until midnight May 20, 2009. This safety zone is in place to protect the public from the hazards associated with a salvage operation that was planned for, but unable to be completed in the last extension. The zone extends for 500 yards, in all directions, from the F/V PATRIOT in approximate position 42°24′27.34″ N, 70°27′17.23″ W. The position of the safety zone has been modified slightly from the prior safety zones so as to better identify its location.

This action is intended to prohibit vessels and persons from entering, transiting, anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston, Massachusetts. Public notifications about this safety zone have been and will continue to be made through broadcast and local notice to mariners. Marine traffic may transit safely in surrounding areas of Massachusetts Bay, but are restricted from entering the area delineated above.

The Captain of the Port anticipates minimal negative impact on vessel traffic due to the limited area and duration covered by this safety zone.

Regulatory Analyses

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

Regulatory Planning and Review

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

Small Entities

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

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

This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit, anchor, or fish in a portion of the Massachusetts Bay covered by the safety zone. This rule will not have a significant impact on a substantial number of small entities for the following reasons: The area this rule is affecting is very small and there is plenty of water in the area for vessels to transit around.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 0023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves pertains to a temporary safety zone established and extended to address an emergency situation lasting more than one week.

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Revise temporary § 165.T01–1272, to read as follows:

§ 165.T01–1272 Safety Zone: Underwater Object, Massachusetts Bay, MA.

(a) *Location.* The following area is a safety zone: All navigable waters, from surface to bottom, of Massachusetts Bay within a 500 yard radius of underwater object, in approximate position 42°24′27.34″ N, 70° 27′17.23″ W.

(b) *Definitions.* The following definition applies to this section: Designated representative means any commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port Boston.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) In accordance with the general regulations in § 165.23 of this part, all vessels and persons are prohibited from entering the safety zone without permission from the Captain of the Port Boston. In addition, all vessels and persons are prohibited from anchoring, diving, dredging, dumping, fishing, trawling, laying cable, or conducting salvage operations in this zone except as authorized by the Coast Guard Captain of the Port Boston.

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

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

(5) Persons desiring to enter the safety zone may request permission from the Captain of the Port Boston via VHF Channel 16 or via telephone at (617) 223–3201.

(d) *Enforcement Period.* This rule will be enforced from 11 p.m. January 8, 2009, until midnight May 20, 2009.

Dated: May 6, 2009.

Gail P. Kulisch,

Captain, U.S. Coast Guard, Captain of the Port Boston.

[FR Doc. E9–11325 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0064]

RIN 1625–AA00

Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Atlantic Ocean in the vicinity of Ocean City, MD to support the Ocean City Air Show. This action will restrict vessel traffic on the Atlantic Ocean to protect mariners from the hazards associated with air show events.

DATES: This rule is effective June 12 through June 14, 2009 from 10 a.m. to 4 p.m. each day.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0064 and are available online by going to *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0064 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail LT Tiffany Duffy, Chief, Waterways Management Division, Sector Hampton Roads, Coast Guard; telephone 757–668–5580, e-mail *Tiffany.A.Duffy@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 23, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD in the **Federal Register** (74 FR 12102). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Coast Guard Sector Hampton Roads has been notified that from June 12 through June 14, 2009, Ocean City, MD will host an air show event on the Atlantic Ocean between Talbot Street and 33rd Street in Ocean City, MD. In recent years, there have been unfortunate instances of jets and planes crashing during performances at air shows. Along with the jet or plane crash, there is typically a wide area of scattered debris that also damages property and could cause significant injury or death to mariners observing the air shows. Due to the need to protect mariners and the public transiting the Atlantic Ocean immediately below the air show from hazards associated with the air show, the Coast Guard is establishing a safety zone bound by the following coordinates: 38°21′30″N/075°03′32″W, 38°21′39″N/075°04′08″W, 38°29′47″N/075°04′58″W, 38°19′37″N/075°04′20″W (NAD 1983). Access to this area will be temporarily restricted for public safety purposes.

Discussion of Comments and Changes

The Coast Guard is establishing a safety zone on specified waters of the Atlantic Ocean bound by the following coordinates: 38°21′30″N/075°03′32″W, 38°21′39″N/075°04′08″W, 38°29′47″N/075°04′58″W, 38°19′37″N/075°04′20″W (NAD 1983), in the vicinity of Ocean City, Maryland. This safety zone will be established in the interest of public safety during the Ocean City Air Show and will be enforced from 10 a.m. to 4 p.m. each day from June 12, through June 14, 2009. Access to the safety zone will be restricted during the specified dates and times. Except for vessels authorized by the Captain of the Port or his Representative, no person or vessel may enter or remain in the safety zone. No comments were received on docket USCG–2009–0064 regarding this rule and no changes have been made to this rule.

Regulatory Analyses

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

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. Although this regulation restricts access to the safety zone, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone will only be in place for a limited duration, before the effective period of June 12, through June 14, 2009, maritime advisories will be issued allowing mariners to adjust their plans accordingly.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This rule does not have tribal implications under Executive Order

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(d) of the Instruction and neither an environmental assessment nor an environmental impact statement is required. This rule involves a temporary safety zone that will be in effect for less than one week. An ''Environmental Analysis Check List'' supporting this determination is available in the docket where indicated under the ''Public Participation and Request for Comments'' section of this preamble.

List of Subjects 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0064 to read as follows:

§ 165.T05–0064 Safety Zone: Ocean City Air Show, Atlantic Ocean, Ocean City, MD.

(a) *Regulated Area.* The following area is a safety zone: specified waters of the Atlantic Ocean bound by the following coordinates: 38°21′30″ N/075°03′32″ W, 38°21′39″ N/075°04′08″ W, 38°29′47″ N/075°04′58″ W, 38°19′37″ N/075°04′20″ W (NAD 1983), in the vicinity of Ocean City, Maryland.

(b) *Definition:* For the purposes of this part, Captain of the Port Representative: means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads can be reached through the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia at telephone number (757) 668–5555.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM marine band radio channel 13 (165.65Mhz) and channel 16 (156.8 Mhz).

(d) *Enforcement Period:* This regulation will be in enforced from 10 a.m. to 4 p.m. daily from June 12, 2009 to June 14, 2009.

Dated: May 1, 2009.

M.S. Ogle,

Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. E9–11326 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AN23

Expansion of Enrollment in the VA Health Care System

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the Department of Veterans Affairs (VA) medical regulations regarding enrollment in the VA health care system. In particular, it establishes additional sub-priorities within enrollment priority category 8 and provides that beginning on the effective date of the rule, VA will begin enrolling priority category 8 veterans whose income exceeds the current means test and geographic means test income thresholds by 10 percent or less.

DATES: *Effective date:* This final rule is effective June 15, 2009.

FOR FURTHER INFORMATION CONTACT: Tony Guagliardo, Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461–1591. (This is not a toll free number).

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** (74 FR 3535) on January 21, 2009, we proposed amendments to 38 CFR 17.36 regarding enrollment of veterans for purposes of VA hospital and outpatient care. This document adopts as a final rule, without change, those proposed amendments.

This final rule amends regulations implementing Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, which required VA to

establish a national enrollment system to manage the delivery of inpatient hospital care and outpatient medical care, within available appropriated resources. It directed that the enrollment system be managed in such a way as ''to ensure that the provision of care to enrollees is timely and acceptable in quality,'' and authorized such sub-prioritization of the statutory enrollment categories ''as the Secretary determines necessary.'' The law also provided that starting on October 1, 1998, most veterans had to enroll in the VA health care system as a condition for receiving VA hospital and outpatient care.

We provided a 60-day comment period, which ended on February 20, 2009. We received comments from one individual who essentially expressed concern about VA's evaluation of his service-connected disability and recommended that VA amend the current means test for VA medical care to provide certain unspecified exceptions. However, we did not propose to amend any of the disability evaluation regulations in 38 CFR part 3 or how VA administers the current means test for VA medical care in 38 CFR 17.47(d) through (f). Accordingly, the comments are not within the scope of this rulemaking and we will not make any changes based upon the comments.

Previous Interim Final Rule and Responses to Comments

The proposed rule also noted that the amendments would modify provisions adopted in the interim final rule published in the **Federal Register** on January 17, 2003 (68 FR 2669), which limited enrollment of veterans for VA medical care under priority category 8. We received five comments concerning that interim final rule. All of the commenters expressed disagreement with VA's decision to suspend enrollment of additional veterans in priority category 8. In that regard, each of the commenters would support the extension of priority 8 coverage in this final rule.

Each of the commenters also generally expressed the view that VA should provide care to all veterans because they served their country. However, as discussed in the preambles to the 2003 interim final rule and 2009 proposed rule, VA is required to assess available resources and determine the number of veterans it is able to enroll to ensure that medical services provided are both timely and acceptable in quality. An enrollment system is necessary because the provision of VA health care is discretionary and can be provided only to the extent that appropriated resources are available for that purpose. The enrollment decisions made in the interim final rule and this final rule were based on an assessment concerning available resources, and we did not receive any comments regarding either rule suggesting that VA's assessment was incorrect.

Based on the rationale in the proposed rule, we are adopting the provisions of the proposed rule as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments.

Paperwork Reduction Act

This rule contains no provisions constituting a new collection of information, but would change, merely by adding an option of a new method of submission, a collection of information that has been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection provisions affected by this rule have been approved under control number 2900–0091.

Executive Order 12866 and Congressional Review Act

This is an economically significant regulatory action under Executive Order 12866 and constitutes a major rule under the Congressional Review Act.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a ''significant regulatory action'' requiring review by OMB as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of entitlement recipients; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

VA has examined the economic, interagency, budgetary, legal, and policy implications of this rule and has concluded that it is an economically significant regulatory action under Executive Order 12866 because it may have an annual effect on the economy of $100 million or more and may raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule is also a major rule under the Congressional Review Act because it is likely to result in an annual effect on the economy of $100 million or more.

VA has attempted to follow OMB circular A–4 to the extent feasible in this analysis. The circular first calls for a discussion of the need for the regulation. The Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329) was enacted on September 30, 2008. The accompanying report language stated that funding was included to reopen priority category 8 enrollment. The preamble above discusses the need for the regulation in more detail. There are not any alternatives to publishing this rule that will accomplish the stated provisions in the report language of the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329).

VA uses the Enrollee Health Care Projection Model (Model), a health care actuarial model, to project veteran demand for VA health care. To project enrollment and expenditures under this proposed regulatory change, VA first identified the number of non-enrolled veterans whose income exceeds the current VA means test and geographic means test income thresholds by 10 percent or less. VA then projected the number of those veterans who would enroll based on historical priority category 8 enrollment rates. The projected health care service utilization for these new enrollees was based on the historical morbidity and reliance rates of the current priority category 8

enrollee population. The projected expenditures represent the cost to provide the projected health care services to these new enrollees.

Using the 2008 Model, VA projects that this regulatory change would result in an additional 258,705 priority category 8 enrollees in FY 2009. The projected increase in total health care service expenditures associated with this new enrollment is $485 million in FY 2009. The revenues generated by the first- and third-party collections are projected to be $121 million,[1] resulting in a $364 million growth in net health service expenditures for FY 2009, and $375 million was provided in the Consolidated Security, Disaster Assistance, and Continuing Appropriations Act, 2009 (Pub. L. 110–329). VA's expenditures related to this proposed regulatory change are projected to be approximately $2.931 billion for five years.[2] These expenditures exclude services such as Long Term Care, Readjustment Counseling, Spina Bifida, Foreign Medical Programs, Non-Veteran Medical Care and CHAMPVA.

[1] The first party collections are based on the projected health care service utilization of the new Priority 8 enrollees. In the base year (2007), we applied the appropriate co-payment to the projected services. We then balanced the resulting co-payment revenue projections to the actual collections for 2007 for four categories (inpatient, outpatient, residential rehabilitation, and pharmacy) and by Veterans Integrated Service Network (VISN) to account for the amount actually collected. The resulting first-party revenue per service developed for 2007 is applied to the projected services in future years to project the first-party revenue associated with health care utilization of the new Priority 8 enrollees. Further, the pharmacy co-payment is increased over time based on the legislated Consumer Price Index (CPI) schedule.

To develop the third-party collections, we calculated the percentage of third-party revenue collected in 2007 as a percent of 2007 expenditures by VISN, priority level, and two age bands (under and over age 65). We then applied these percentages to the projected expenditures for the new Priority 8 enrollees in future years. For 2010, the percentages were increased to reflect VHA's initiatives to increase third-party revenue collections.

[2] Five Year Projection Table

($ in billions):						
Present Value: (Future Value)/((1+i)^n):						
($ in billions)	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	5 year
Future Value (FV)	$0.485	$0.533	$0.580	$0.631	$0.702	$2.931
3% discount rate (i)	3.00%	3.00%	3.00%	3.00%	3.00%	.....
7% discount rate (i)	7.00%	7.00%	7.00%	7.00%	7.00%	.....
Number of Years (n)	0	1	2	3	4	.....
Present Value (PV) at 3%	$0.485	$0.517	$0.546	$0.578	$0.624	$2.751
Present Value (PV) at 7%	$0.485	$0.498	$0.506	$0.515	$0.536	$2.540

Regulatory Flexibility Act

The Secretary hereby certifies that the adoption of this rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule will not directly affect any small entities. Only individuals will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the final regulatory flexibility analysis requirements of section 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for the Construction of State Homes; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; and 64.022, Veterans Home Based Primary Care.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and recordkeeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: April 15, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

■ For the reasons set out in the preamble, the Department of Veterans Affairs amends 38 CFR part 17 as follows:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721, and as stated in specific sections.

■ 2. Amend § 17.36 by revising paragraphs (b)(8), (c)(1), (c)(2), and (d)(1) and the authority citation to read as follows:

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

* * * * *

(b) * * *

(8) Veterans not included in priority category 4 or 7, who are eligible for care only if they agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who subsequently do not request disenrollment;

(ii) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(iii) Nonservice-connected veterans who were in an enrolled status on January 17, 2003, or who are moved from a higher priority category or subcategory due to no longer being eligible for inclusion in such priority category or subcategory and who

subsequently do not request disenrollment;

(iv) Nonservice-connected veterans not included in paragraph (b)(8)(iii) of this section and whose income is not greater than ten percent more than the income that would permit their enrollment in priority category 5 or priority category 7, whichever is higher;

(v) Noncompensable zero percent service-connected veterans not included in paragraph (b)(8)(i) or paragraph (b)(8)(ii) of this section; and

(vi) Nonservice-connected veterans not included in paragraph (b)(8)(iii) or paragraph (b)(8)(iv) of this section.

(c) * * *

(1) It is anticipated that each year the Secretary will consider whether to change the categories and subcategories of veterans eligible to be enrolled. The Secretary at any time may revise the categories or subcategories of veterans eligible to be enrolled by amending paragraph (c)(2) of this section. The preamble to a **Federal Register** document announcing which priority categories and subcategories are eligible to be enrolled must specify the projected number of fiscal year applicants for enrollment in each priority category, projected healthcare utilization and expenditures for veterans in each priority category, appropriated funds and other revenue projected to be available for fiscal year enrollees, and projected total expenditures for enrollees by priority category. The determination should include consideration of relevant internal and external factors, *e.g.*, economic changes, changes in medical practices, and waiting times to obtain an appointment for care. Consistent with these criteria, the Secretary will determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.

(2) Unless changed by a rulemaking document in accordance with paragraph (c)(1) of this section, VA will enroll the priority categories of veterans set forth in § 17.36(b) beginning [effective date of regulation], except that those veterans in subcategories (v) and (vi) of priority category 8 are not eligible to be enrolled.

(d) * * *

(1) *Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility or via an Online submission at *https://www.1010ez.med.va.gov/sec/vha/1010ez/*.

* * * * *

(Authority: 38 U.S.C. 101, 501, 1521, 1701, 1705, 1710, 1722)

[FR Doc. E9–11400 Filed 5–14–09; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 111

Standard Mail Volume Incentive Program (aka Summer Sale)

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service is revising *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®), to add section 709.2 which introduces new standards for a special volume incentive program for mailers of Standard Mail® letters and flats with mail volume exceeding their individual USPS™-determined threshold levels. The program period will be from July 1, 2009 through September 30, 2009.

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

FOR FURTHER INFORMATION CONTACT: Kevin Gunther at 202–268–7208.

SUPPLEMENTARY INFORMATION: The Postal Service is implementing a volume incentive program for qualified high-volume mailers of commercial or Nonprofit Standard Mail letters and flats, for volume mailed between July 1, 2009 and September 30, 2009, above their USPS-determined threshold level. This program encourages mailers to provide new volume and to take advantage of our current excess capacity to process and deliver additional volume.

To participate, mailers must be the permit holder (*i.e.,* owner) of a permit imprint advance deposit account(s) or the owner of qualifying mail volume entered through the permit imprint advance deposit account of a mail service provider. Qualifying mailers must be able to demonstrate volume of at least one million pieces, within the program qualification period of October 1, 2007 to March 31, 2008, for a permit imprint advance deposit account(s), precanceled stamp permit(s), postage meter permit(s), or by a combination of these methods. Applicants may also qualify for the program with volume mailed through an account(s) owned by a mail service provider, when adequate documentation is provided that specifies the applicant is the owner of the mail. Those mailers eligible to participate in the program will be notified in writing before June 1, 2009. Mailers wishing to participate in the program, who believe they meet the eligibility standards under DMM 709.2.2 and were not notified by letter, may request a review of their eligibility by contacting the USPS at *summersale@usps.gov*.

The Postal Service has a process, through its Business Service Network (BSN), to review questions from qualifying mailers regarding calculations of their respective threshold levels or their recorded volume within the program period. Qualifying mailers will be provided with program details and the procedure for questioning threshold calculations by letter before June 1, 2009.

A **Federal Register** final rule, published April 6, 2009 (74 FR 8009–8033) implemented a saturation mail volume incentive program encouraging mailers to increase their saturation Standard Mail letters or flats volume within the period beginning on May 11, 2009 and ending May 10, 2010. This program initially excluded mailers, entering into the saturation mail volume incentive program, from participating in other Postal Service-sponsored incentive programs. However, standards have been revised to allow mailers to be eligible for the Standard Mail volume incentive program independently of their status within the saturation mail volume incentive program.

Participating mailers demonstrating Standard Mail letter or flat volume above their established threshold level will receive a credit following the close of the program period. Thresholds will be calculated independently for each applicant, by comparing the volume of Standard Mail letters and flats mailed within the period from October 1, 2007 to March 31, 2008 to the volume of Standard Mail letters and flats mailed within the period of October 1, 2008 to March 31, 2009. The change in recorded volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to March 31, 2009, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). A volume decline from October 1, 2008 to March 31, 2009 will appear as a ratio below 1.0. The applicable ratio will then be applied to the volume of Standard Mail letters and flats, for all of the applicant's permit volume or other qualifying volume recorded through the permit(s) of a mail service provider, demonstrated during the period from July 1, 2008 through September 30, 2008. This result represents the USPS-determined threshold level for an individual applicant.

Mailers (applicants) are eligible to participate in the program with

qualifying volume prepared by a mail service provider when entered through a permit owned by the applicant. Mail volume through a mail service provider's permit, may also qualify for the program, but only if adequate documentation identifies the mail as being prepared on behalf of the applicant and demonstrates the applicant's prior mailing activity. Mail service providers are not eligible for the Standard Mail volume incentive program.

Approved program participants, demonstrating an increase in their total Standard Mail letter and flat volume above their approved threshold level, will qualify for a credit to a designated permit imprint advance account. The total postage attributable to Standard Mail letters and flats within the program period will be identified for each participant and divided by the total number of recorded pieces, to generate the average price per piece. Participants receive a credit in the amount of 30 percent of the average price per piece for the total number of mailpieces of the incremental volume above their approved threshold level as recorded during the program period.

The Standard Mail volume incentive program is introduced to encourage mailers to generate new mail volume. As a deterrent to mailers shifting previously planned fall volume into the program to obtain incentive credits, participating mailers will be monitored in the calendar month following the end of the program. The participant's previously determined volume trend will be applied to their volume of Standard Mail letters and flats mailed within the month of October 2008, to determine the participant's October 2009 expected volume. Each participant's *actual* October 2009 volume will then be compared to their October 2009 *expected* volume. Participants failing to meet (or exceed) their October 2009 expected volume will have any demonstrated shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

Additionally, as part of the program administration, the Postal Service will require each program participant to certify the data used to calculate the volume trends, threshold levels and October 2009 expected volumes. This certification requirement will be similar to what is currently used on a PS Form 3602, *Postage Statement—Standard Mail,* but may not require submission in hardcopy format. The certification requirement for this initiative is aimed at ensuring that the data used by the Postal Service to calculate the applicable volume trend, threshold level and October 2009 expected volume for each qualifying mailer is accurate.

The Standard Mail volume incentive program is subject to review by the Postal Regulatory Commission (PRC) for up to 45 days following May 1, 2009.

Upon completion of PRC review, the Postal Service adopts the following changes to *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), incorporated by reference in the *Code of Federal Regulations. See* 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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

PART 111—[AMENDED]

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

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

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

Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM)

* * * * *

700 Special Standards

* * * * *

[*Revise title of 709 as follows:*]

709 Experimental and Temporary Classifications

* * * * *

[*Add a new section 709.2.0 to introduce new standards for the Standard Mail volume incentive program as follows:*]

2.0 Standard Mail Volume Incentive Program

2.1 Program Description

The Standard Mail Volume Incentive Program provides special volume pricing for qualified mailers of commercial and Nonprofit Standard Mail letters and flats that are able to document mail volume exceeding their individual USPS-determined threshold level. The program period is July 1, 2009 through September 30, 2009. Participating mailers documenting Standard Mail letter or flat volume above their established threshold level will receive a credit to a designated permit imprint advance deposit account, or Centralized Account Payment System (CAPS) account following the close of the program period. Program participants must review and certify the accuracy of the data used by the USPS to calculate their individual volume trend, threshold level and October 2009 expected volume.

2.2 Eligibility Standards

Mailers are considered eligible for the program as follows:

a. Applicants must be the permit holder (*i.e.,* owner) of one or more permit imprint advance deposit accounts or the owner of qualifying mail volume entered through the permit imprint advance deposit account of a mail service provider.

b. Applicants must be able to document, in aggregate, volume of at least one million pieces of Standard Mail letters or flats, within the program qualification period of October 1, 2007 to March 31, 2008, as follows:

1. Volume through one or more permit imprint advance deposit accounts, precanceled stamp permits, or postage meter permits owned by the applicant, or

2. Volume prepared by a mail service provider when entered through a permit owned by the applicant, or

3. Volume within a mail service provider's permit, which can be identified as being prepared on behalf of the applicant.

c. Mail service providers are not eligible to participate in this program.

2.3 Program Threshold Level

Threshold level figures will be calculated independently for each applicant as follows:

a. Total documented volume of Standard Mail letters and flats recorded within the period from October 1, 2007 to March 31, 2008 will be compared to that recorded within the period of October 1, 2008 to March 31, 2009.

b. The change in recorded mailing volume between these two periods will represent the applicant's volume trend. Trends that show growth for the period of October 1, 2008 to March 31, 2009, versus that shown in the same period of the prior year, will appear as a ratio above 1.0 (expressed here in a decimal format). A volume decline from October 1, 2008 to March 31, 2009 will appear as a ratio below 1.0.

c. The applicable ratio will then be applied to the volume of Standard Mail letters and flats, for all of the applicant's permit activity, or other qualifying volume recorded through the permit of a mail service provider, demonstrated

during the period from July 1, 2008 through September 30, 2008.

d. The product of the calculation in 2.3c will represent the USPS-determined threshold level for the selected applicant.

2.4 Application

Mailers meeting the eligibility criteria will be contacted by letter, describing the application process and requirements. Mailers interested in applying will be provided with a registration Web site and their USPS-determined threshold level. Mailers meeting the eligibility standards under 709.2.2, and not notified by letter, may request a review of their eligibility by contacting the USPS at *summersale@usps.gov*. Mailers wishing to dispute their threshold level calculations will be provided with instructions on that process. Following registration, mailers will be notified of their approval for participation in the program, their approved threshold level, and their revised threshold level (if applicable).

2.5 Program Participation

Mailers may participate in the program with qualifying volume as follows:

a. Standard Mail letter and flat volume mailed by the participant through the participant's own permit imprint advance account, precanceled stamp permit(s), or postage meter permit(s);

b. Standard Mail letter and flat volume prepared by a mail service provider, when entered through a permit owned by the participant;

c. Standard Mail letter and flat pieces mailed through a mail service provider's permit, only when the pieces can be identified as being prepared for the participant and when the applicant's prior mailing activity through the mail service provider's permit can be validated.

2.6 Incentive Program Credits

Approved participants demonstrating an increase in Standard Mail letter and flat volume above their approved threshold level qualify for a credit to their applicable permit imprint advance account or, if approved, the permit imprint advance account of a designated mail service provider as follows:

a. The total postage paid for commercial and Nonprofit Standard Mail letters and flats recorded during the program will be identified for each participant.

b. The total postage paid during the program period will be divided by the total number of recorded pieces to generate the average price per piece for the program period.

c. Participants will receive a credit in the amount of 30 percent of the average price per piece applied to the total number of mailpieces, for the incremental volume above their approved threshold level, recorded during the program period.

2.7 Mailing Activity Review

Mailing activity by participants will be reviewed in the calendar month following the end of the program. The qualifying volume recorded for participants may be adjusted in accordance with the following:

a. The participant's previously determined volume trend will be applied to the volume of Standard Mail letters and flats mailed by the participant within the month of October 2008, to determine the program participant's October 2009 expected volume.

b. The participant's actual October 2009 volume will then be compared to their October 2009 expected volume.

c. Participants failing to meet their October 2009 expected volume will have any shortfall in volume deducted from the number of mailpieces eligible for an incentive credit within the program.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. E9–11321 Filed 5–14–09; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2008–0497, FRL–8905–7]

Approval and Promulgation of Implementation Plans; New Jersey Reasonable Further Progress Plans, Reasonably Available Control Technology, Reasonably Available Control Measures and Conformity Budgets

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of two State Implementation Plan revisions submitted by New Jersey that are intended to meet several Clean Air Act (Act) requirements for attaining the 0.08 part per million (ppm) 8-hour ozone national ambient air quality standards. EPA is approving: the 2008 reasonable further progress plans and associated 2008 ozone projection year emission inventories, contingency measures for the 2008 reasonable further progress plans, 2008 conformity budgets used for planning purposes, and the reasonably available control measure analysis. In addition, EPA is conditionally approving New Jersey's efforts to meet the reasonably available control technology requirement. The intended effect of this action is to approve those programs that meet Act requirements and to further achieve emission reductions that will be critical to attainment of the national ambient air quality standard for ozone in New Jersey's two nonattainment areas.

DATES: *Effective Date:* This rule is effective on June 15, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R02–OAR–2008–0497. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: Raymond Forde (*forde.raymond@epa.gov*) concerning emission inventories and reasonable further progress and Paul Truchan (*truchan.paul@epa.gov*) concerning other portions of the SIP revision, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. What action is EPA taking?
II. What was included in New Jersey's SIP submittals?
III. What comments were received?
IV. What SIP Elements is EPA approving?
A. Emission Inventories
B. Reasonable Further Progress Plans
C. Contingency Measures
D. RACT for Stationary Sources
E. RACM Analysis
F. Conformity Budgets

V. What are EPA's conclusions?
VI. Statutory and Executive Order Reviews

I. What action is EPA taking?

The Environmental Protection Agency (EPA) has reviewed elements of New Jersey's comprehensive State Implementation Plan (SIP) revision for the 0.08 ppm 8-hour ozone national ambient air quality standards (NAAQS or standard) [1] along with other related Clean Air Act (Act) requirements necessary to insure attainment of the standard. The EPA is approving: the 2008 reasonable further progress (RFP) plans and associated 2008 ozone projection emission inventories, contingency measures for the 2008 reasonable further progress plans, 2008 conformity budgets used for planning purposes, and the reasonably available control measure analysis, because the State of New Jersey's Department of Environmental Protection (NJDEP) has fully addressed the Act's requirements. In addition, EPA is conditionally approving the RACT SIP for the 8-hour ozone NAAQS based on New Jersey's March 20, 2009 adoption of the additional RACT rules it committed to adopt for 13 source categories.

For additional details on EPA's analysis and findings the reader is referred to the proposal published in the January 16, 2009 **Federal Register** (74 FR 2945) and a more detailed discussion is contained in the Technical Support Document which is available on line at *http://www.regulations.gov*, Docket number EPA–R02–OAR–2008–0497.

II. What was included in New Jersey's SIP submittals?

After completing the appropriate public notice and comment procedures, New Jersey made a series of submittals in order to address the Act's 8-hour ozone attainment requirements. On August 1, 2007, New Jersey submitted its RACT rules, which included a determination that many of the RACT rules currently contained in its SIP meet the RACT obligation for the 8-hour standard, and also included commitments to adopt revisions to several regulations where the State identified more stringent emission limitations that it believed should now be considered RACT. On October 29, 2007, New Jersey submitted a comprehensive 8-hour ozone SIP for the New Jersey portions of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas. It included attainment demonstrations, reasonable further progress (RFP) plans for 2008 and 2009, reasonably available control measures analyses for both areas, contingency measures, on-road motor vehicle emission budgets, and general conformity emission budgets for McGuire Air Force Base and Lakehurst Naval Air Station. These SIP revisions were subject to notice and comment by the public and the State addressed the comments received on the proposed SIPs before adopting the plans and submitting them for EPA review and approval into the SIP. Finally, as part of the RACT evaluation, on December 14, 2007, New Jersey submitted to EPA an assessment of how it planned to address EPA's recently revised Control Technique Guidelines (CTGs).

III. What comments were received?

No comments were received on the January 16, 2009 proposal.

IV. What SIP Elements is EPA approving?

A. Emission Inventories

An emissions inventory is a comprehensive, accurate, current inventory of actual emissions from all sources and is required by section 172(c)(3) of the Act. For ozone nonattainment areas, the emissions inventory must contain volatile organic compounds (VOC) and nitrogen oxides (NO_X) emissions because these pollutants are precursors to ozone formation. EPA previously approved New Jersey's 2002 Base Year emission inventories on July 10, 2006 (71 FR 38770). In this rulemaking, EPA is approving the 2008 projection year emission inventories as the State used them in developing the RFP Plans.

B. Reasonable Further Progress Plans

Section 182(b)(1) of the Act and EPA's 8-hour ozone implementation rule (40 CFR 51.910) require each 8-hour ozone nonattainment area designated moderate and above to submit an emissions inventory and RFP Plan, for review and approval into its SIP, that describes how the area will achieve actual emissions reductions of VOC and NO_X from a baseline emissions inventory. The RFP SIP must provide for a 15 percent emission reduction (either NO_X and/or VOC) accounting for any growth that occurs during the six year period following the baseline emissions inventory year, that is, 2002–2008. New Jersey's RFP Plan contains the required emission reductions that result from adopted control measures included in the New Jersey SIP. EPA is approving New Jersey's RFP Plans.

C. Contingency Measures

For ozone nonattainment areas classified as moderate or above, states must include in their submittal contingency measures to be implemented if the area fails to make RFP or to attain the NAAQS by the applicable attainment date (sections 172(c)(9) and 182(c)(9)). Contingency measures are additional controls to be implemented in the event the area fails to meet an RFP or attainment milestone. New Jersey's RFP contingency plans contain sufficient emission reductions from specific measures to satisfy EPA requirements. All the emission reductions included in the RFP contingency plans are from adopted measures. EPA is approving New Jersey's RFP contingency plan.

D. RACT for Stationary Sources

Sections 172(c)(1), 182(b)(2) and 182(f) of the Act require nonattainment areas that are designated as moderate or above for ozone to adopt RACT. All of New Jersey is subject to this requirement since all counties in the State are located in either of two nonattainment areas that are classified as moderate ozone nonattainment areas for the 8-hour NAAQS for ozone (40 CFR 81.331). The RACT submission from the State of New Jersey consists of: (1) A certification that previously adopted RACT controls in New Jersey's SIP for 101 source categories that were approved by EPA under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and that they continue to represent RACT for the 8-hour ozone implementation purposes; (2) a commitment to adopt new or more stringent regulations that represent RACT control levels for both specific source categories and specific sources; and (3) a negative declaration that for certain of CTGs and/or ACTs there are no sources within New Jersey or that there are no sources above the applicability thresholds. EPA is conditionally approving the RACT SIP for the 8-hour ozone NAAQS based on New Jersey's March 20, 2009 adoption of the additional RACT rules it committed to adopt for 13 source categories. EPA will be taking action on these rules in a future rulemaking.

E. RACM Analysis

Pursuant to section 172(c)(1) of the Act, states are required to implement all Reasonably Available Control Measures (RACM) as expeditiously as practicable. The State's analysis demonstrated that

[1] Unless otherwise specifically noted in the action, references to the 8-hour ozone standard are to the 0.08 ppm ozone standard promulgated in 1997.

none of the RACM's, singularly or in combination, will yield emissions benefits sufficient to advance the 2010 attainment date for the two nonattainment areas in which the New Jersey counties are located. EPA is approving New Jersey's moderate area RACM SIP for the two moderate nonattainment areas in which New Jersey is located.

F. Conformity Budgets

Consistent with our adequacy review of New Jersey's submittal (73 FR 41068, July 17, 2008), EPA is approving New Jersey's 2008 motor vehicle emissions budgets associated with the 2008 RFP Plans in Table 1. EPA is also approving the general conformity budgets for McGuire Air Force Base (AFB) and Lakehurst Navel Air Station (NAS) in Table 2.

TABLE 1—APPROVED MOTOR VEHICLE EMISSIONS BUDGETS

[Tons per day]

MPO	2008	
	VOC	NO_X
NJTPA (except Ocean County)	85.38	143.60
NJTPA (Ocean County only)	6.93	8.69
DVRPC	27.75	69.67
SJTPO	14.14	32.93

TABLE 2—APPROVED EMISSION BUDGETS FOR MCGUIRE AFB AND LAKEHURST NAS

Base	Year	VOC (tons/year)	NO_X (tons/year)
McGuire AFB	2008	730	1,534
	2009	730	1,534
	2010	730	1,534
	2011	730	1,534
Lakehurst NAS	2008	109	563
	2009	115	639
	2010	122	716
	2011	129	793

V. What are EPA's conclusions?

EPA is approving the following SIP elements required by the Act: 2008 RFP Plans and associated 2008 ozone projection year emission inventories, contingency measures for failure to meet the 2008 RFP Plan milestones, 2008 emission budgets used for planning purposes, and moderate area RACM analysis. EPA is conditionally approving the RACT analysis for the 8-hour ozone NAAQS based on New Jersey having fulfilled it's commitment to adopt RACT rules for 13 source categories by April 1, 2009. EPA will be taking action on these rules in a future rulemaking. If EPA approves the submittal, the RACT analysis will be fully approved in its entirety and will replace the RACT conditionally approved into the SIP. These revisions meet the requirements of the Act and EPA's regulations, and are consistent with EPA's guidance and policy. EPA is taking this action pursuant to section 110 and part D of the Act and EPA's regulations.

VI. Statutory and Executive Order Reviews

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

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

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 14, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 5, 2009.

George Pavlou,

Acting Regional Administrator, Region 2.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart FF—New Jersey

■ 2. Section 52.1582 is amended by adding new paragraph (m) to read as follows:

§ 52.1582 Control strategy and regulations: Ozone.

* * * * *

(m)(1) The 2008 Reasonable Further Progress Plans and associated 2008 ozone projection year emission inventories for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(2) The contingency measures for failure to meet the 2008 RFP Plan milestones for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(3) The moderate area Reasonably Available Control Measure Analysis for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(4) The 2008 motor vehicle emissions budgets for the New Jersey portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT and the Philadelphia-Wilmington-Atlantic City, PA-NJ-MD-DE nonattainment areas included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(5) The general conformity budgets for McGuire AFB and Lakehurst NAS included in New Jersey's October 29, 2007 State Implementation Plan revision are approved.

(6) The Statewide reasonably available control technology (RACT) analysis for the 8-hour ozone included in the August 1, 2007 State Implementation Plan revision is conditionally approved.

[FR Doc. E9–11158 Filed 5–14–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 74, No. 93
Friday, May 15, 2009

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

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AB09

Scales; Accurate Weights, Repairs, Adjustments or Replacements After Inspection

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

ACTION: Proposed rule.

SUMMARY: We are proposing to amend one section of the regulations under the Packers and Stockyards Act (P&S Act) to incorporate by reference the 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' and to require that scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement meet applicable requirements of the 2009 NIST Handbook 44. Additionally, we are proposing to amend that section of the regulations to add ''swine contractors'' to the list of regulated entities to which the section applies.

DATES: We will consider comments we receive by July 14, 2009.

ADDRESSES: We invite you to submit comments on this proposed rule. You may submit comments by any of the following methods:

- *E-Mail: comments.gipsa@usda.gov.*
- *Mail*: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Fax*: (202) 690–2173.
- *Hand Delivery or Courier*: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1643–S, Washington, DC 20250–3604.
- *Internet*: Go to *http://www.regulation.gov.* Follow the on-line instruction for submitting comments.

Instructions: All comments should make reference to the date and page number of this issue of the **Federal Register**. Regulatory analyses and other documents relating to this action will be available for public inspection in Room 1643–S, 1400 Independence Avenue, SW., Washington, DC 20250–3604 during regular business hours. All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)). Please call GIPSA's Management Support Staff at (202) 720–7486 to arrange a public inspection of comments received.

FOR FURTHER INFORMATION CONTACT: S. Brett Offutt, Director, Policy and Litigation Division, P&SP, GIPSA, 1400 Independence Ave., SW., Washington, DC 20250, (202) 720–7363, *s.brett.offutt@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Grain Inspection, Packers and Stockyards Administration (GIPSA), enforces the P&S Act (7 U.S.C. 181 *et seq.*). Under authority granted to us by the Secretary of Agriculture (Secretary), we are authorized (7 U.S.C. 228) to create those regulations necessary to carry out the provisions of the P&S Act that specify requirements for regulated entities that purchase livestock or poultry.

The regulations under the P&S Act have specific requirements for (1) scales that regulated entities use for weighing livestock, poultry or feed and (2) packers purchasing livestock on a carcass grade, weight, or grade and weight basis.

The Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) (Act) amended the P&S Act to add ''swine contractor'' as a regulated entity. Section 10502 of the Act defined swine contractor as ''* * * any person engaged in the business of obtaining swine under a swine production contract for the purpose of slaughtering the swine or selling the swine for slaughter, if (a) the swine is obtained by the person in commerce; or (b) the swine (including products from the swine) obtained by the person is sold or shipped in commerce.''

Adding ''swine contractor'' to specific sections of the regulations would dispel any confusion among swine contractors regarding which regulations under the P&S Act are applicable to them. It would also allow GIPSA to more easily identify and enforce violations of the P&S Act.

Description of Proposed Changes

We propose to amend Section 201.71 of the regulations under the P&S Act (9 CFR 201.71) to incorporate by reference the 2009 edition of NIST Handbook 44. We would also provide instructions on how to obtain copies of the handbook, which includes updated standards for operating, maintaining, and testing scales and standards for electronic devices.

We also propose to revise this section of the regulations by adding the term ''swine contractors,'' as follows:

- § 201.71(a) would state that swine contractors must operate, maintain, and test scales according to the requirements of the 2009 edition of Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices;
- § 201.71(b) would require swine contractors to use scales equipped with a printing device which shall record weight values on a scale ticket or other document; and
- § 201.71(d) would require swine contractors to use only scales that are found, upon testing and inspection, to be in a condition to give accurate weights.

The proposed changes to add swine contractor as a regulated entity would make this section consistent with other regulations under the P&SA Act regarding regulated entities that have been amended to include swine contractors.

Options Considered

We considered the option of not adding swine contractors to the regulations; we would continue to protect the interest of swine producers indirectly through regulation of packers, dealers, and market agencies. That option, however, is contrary to the intent of Congress, which amended the P&S Act to give GIPSA specific authority over swine contractors. We also considered not revising the regulations under the P&S Act regarding the standards for operating, maintaining, and testing scales and

standards for electronic devices. Choosing this option, however, would not provide up-to-date standards for electronic devices as new technology emerges, nor would it provide consistency with the standards imposed by the States' departments of weights and measures.

Effects on Regulated Entities

This proposed rule would make it clear that swine contractors as well as other regulated entities must operate, maintain, and test scales according to the requirements of the 2009 edition of NIST Handbook 44 and to use scales in good condition and equipped with a printing device to record weight values. Since regulated entities are required under State law to comply with NIST Handbook 44, there would be no new costs or burden to comply.

Executive Order 12866 and Regulatory Flexibility Act

The Office of Management and Budget (OMB) has designated this rule as not significant for the purposes of Executive Order 12866.

We have determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While this proposed rule would affect swine contractors, most such entities do not meet the definition for small entities in the Small Business Act (13 CFR 121.201). Therefore, we are not providing an initial regulatory flexibility analysis.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. These actions are not intended to have retroactive effect. This rule will not pre-empt state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). It does not involve collection of new or additional information by the federal government.

E-Government Act Compliance

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

List of Subjects in 9 CFR Part 201

Swine, Hogs, Livestock, Measurement standards.

For the reasons set forth in the preamble, we propose to amend 9 CFR part 201 to read as follows:

PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT

1. Revise the authority citation for part 201 to read as follows:

Authority: 7 U.S.C. 181–229c.

2. In § 201.71, paragraphs (a), (b) and (d) are revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, swine contractors, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scales Code, and Weights Code of the 2009 edition of the National Institute of Standards and Technology (NIST) Handbook 44, ''Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices,'' which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on [INSERT EFFECTIVE DATE OF FINAL RULE], in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. The handbook is for sale by the National Conference of Weights & Measures (NCWM), 1135 M Street, Suite 110, Lincoln, Nebraska 68508. Information on these materials may be obtained from NCWM by calling 402–434–4880, by e-mailing *nfo@ncwm.net,* or on the Internet at *http://www.nist.gov/owm.*

(b) All scales used by stockyard owners, swine contractors, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry and all scales used for the purchase, sale acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

* * * * *

(d) No scales shall be operated or used by any stockyard owners, swine contractors, market agencies, dealers, packers, or live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations in this section.

Alan R. Christian,

Acting Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E9–11159 Filed 5–14–09; 8:45 am]

BILLING CODE 3410–KD–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 913

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1204

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight

12 CFR Part 1702

RIN 2590–AA07

Privacy Act Implementation

AGENCIES: Federal Housing Finance Board; Federal Housing Finance Agency; Office of Federal Housing Enterprise Oversight.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Federal Housing Finance Agency (FHFA) is proposing a regulation providing the procedures and guidelines under which it will implement the Privacy Act of 1974, as amended. The proposed regulation describes the policies and procedures whereby individuals may obtain notification of whether an FHFA system

of records contains information about the individual and, if so, how to access or amend a record under the Privacy Act. Upon adoption of this regulation the Privacy Act regulations of the Federal Housing Finance Board and the Office of Federal Housing Enterprise Oversight, will be removed.

DATES: Comments regarding this proposed rulemaking must be received in writing on or before June 15, 2009. For additional information, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: You may submit your comments on the proposed rulemaking, identified by ''Privacy Act RIN 2590–AA07,'' by any of the following methods (Please send comments by one method only):

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail: RegComments@fhfa.gov.* Please include ''Privacy Act RIN–2590–AA07'' in the subject line of the message.
- *Mail:* Any U.S. Mail service or United Parcel Service, Federal Express, or other commercial delivery service, addressed to: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA07, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier to:* Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA07, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: David A. Lee, Senior Agency Official for Privacy, telephone (202) 408–2514, (not a toll free number), Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Comments

FHFA invites comments on all aspects of the proposed Privacy Act Implementation regulation and will take all comments into consideration before issuing a final regulation.

Copies of all comments received will be posted without change on the FHFA Internet Web site, *http://www.fhfa.gov,* and will include any personal information provided. In addition, copies of all comments received will be available for examination by the public on business days between the hours of 10 a.m. and 3 p.m. at the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. To make an appointment to inspect comments, please call the Office of General Counsel at (202) 414–3751.

II. Background

A. Privacy Act

The Privacy Act of 1974 serves to balance the Federal Government's need to maintain information about individuals while protecting individuals against unwarranted invasions of privacy stemming from Federal agencies' collection, maintenance, use, security, and disclosure of personal information about them that is contained in systems of records.

The Privacy Act requires each Federal agency to publish rules describing its Privacy Act procedures and any system of records it exempts from provisions of the Privacy Act, including the reasons for the exemption.

Pursuant to the Privacy Act, FHFA will inform the public of each system of records it maintains by separately publishing notices of each system of records in the **Federal Register** and also on the FHFA Web site at *http://www.fhfa.gov.* The notices will describe the standards for FHFA employees, regarding collection, use, maintenance, or disclosure of records in the system and identify whether information in the system is exempt from provisions of the Privacy Act. The system manager responsible for the system will also be identified and any other contact information will be included. Moreover, notices will inform individuals with detailed information regarding the exercise of their rights, such as what procedures to take to determine whether a system contains a record pertaining to them, how to access those records pertaining to them, how to seek to amend or correct information in a record about them, or, how to contest adverse determinations with respect to such a record.

B. Establishment of the Federal Housing Finance Agency

The Housing and Economic Recovery Act of 2008 (HERA), Public Law No. 110–289, 122 Stat. 2654, amended the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (Act) (12 U.S.C. 4501 *et seq.*) and the Federal Home Loan Bank Act (12 U.S.C. 1421–1449) to establish FHFA as an independent agency of the Federal Government [1] to ensure that the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation (collectively, the Enterprises), and the Federal Home Loan Banks (Banks) (collectively, the regulated entities) are capitalized adequately; foster liquid, efficient, competitive and resilient national housing finance markets; operate in a safe and sound manner; comply with the Act and rules, regulations, guidelines and orders issued under the Act, and the respective authorizing statutes of the regulated entities; and carry out their missions through activities authorized and consistent with the Act and their authorizing statutes; and, that the activities and operations of the regulated entities are consistent with the public interest.

The Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) will be abolished one year after enactment of HERA. However, the regulated entities continue to operate under regulations promulgated by OFHEO and FHFB; and such regulations are enforceable by the Director of FHFA until such regulations are modified, terminated, set aside, or superseded by the Director.[2]

Section 1201 of HERA requires the Director, prior to promulgating regulations relating to the Banks, to consider the differences between the Banks and the Enterprises.[3] The Director considered the differences between the Banks and the Enterprises as they relate to the above factors and determined that pending the publication of consolidated Systems of Records Notices, FHFA will maintain the Systems of Records established by FHFB and OFHEO, respectively. The Director requests comments from the public about whether differences related to these factors should result in a revision to the proposed rule as they relate to the Banks.

III. Section-by-Section Analysis

Section 1204.1 Why did FHFA issue this part?

This proposed section describes the purpose of the proposed regulation, which is to implement the Privacy Act, and explains FHFA general policies and procedures for individuals requesting access to records, amending or correcting records, and requesting an accounting of disclosures of records.

[1] *See* Division A, titled the ''Federal Housing Finance Regulatory Reform Act of 2008,'' Title I, § 1101 of HERA.

[2] *See* §§ 1302 and 1312 of the Act (12 U.S.C. 4511 and 4512), as amended.

[3] *See* § 1313 of the Act (12 U.S.C. 4513), as amended.

Section 1204.2 What do the terms in this part mean?

This proposed section sets forth definitions of some terms in this part.

Section 1204.3 How do I make a Privacy Act request?

This proposed section explains what an individual must do to submit a valid request to FHFA for access to records or information to amend or correct records or for an accounting of disclosures of records. It also describes the information an individual is to provide, allowing FHFA to identify the records sought and determine whether the request can be granted.

Section 1204.4 How will FHFA respond to my Privacy Act request?

This section, as proposed, describes the period of time within which FHFA will respond to requests. It also explains that FHFA will grant or deny requests in writing, provide reasons if a request is denied in whole or in part, and explain the right of appeal.

Section 1204.5 What if I am dissatisfied with the FHFA response to my Privacy Act request?

This proposed section describes when and how an individual may appeal FHFA determination on a Privacy Act request and how and within what period of time FHFA will make determinations on an appeal.

Section 1204.6 What does it cost to get records or information under the Privacy Act?

This section, as proposed, explains that requesters are expected to pay fees for the duplication of records that they requested.

Section 1204.7 Are there any exemptions from the Privacy Act?

This section, as proposed, explains that some exemptions from the Privacy Act exist, how they are made effective, what the effect of an exemption is, and how to identify if an exemption applies.

Section 1204.8 How are records secured?

This proposed section explains how FHFA generally protects records under the Privacy Act.

Section 1204.9 Does FHFA collect and use Social Security numbers?

This proposed section explains that FHFA collects Social Security numbers only when authorized and describes the conditions under which they may be collected.

Section 1204.10 What are FHFA employee responsibilities under the Privacy Act?

This proposed section lists the responsibilities of FHFA employees under the Privacy Act.

Regulatory Impacts

Paperwork Reduction Act

The proposed regulation does not contain any information collection requirement that requires the approval of OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). FHFA has considered the impact of the proposed regulation under the Regulatory Flexibility Act. The General Counsel of FHFA certifies that the proposed regulation is not likely to have a significant economic impact on a substantial number of small business entities because the regulation is applicable to the internal operations and legal obligations of FHFA.

List of Subjects

12 CFR Part 913

Administrative practice and procedure, Archives and records, Freedom of information, Privacy.

12 CFR Part 1204

Accounting, Amendment, Appeals, Correction, Disclosure, Exemptions, Fees, Records, Requests, Privacy Act, Social Security numbers.

12 CFR Part 1702

Privacy.

Authority and Issuance

Accordingly, for the reasons stated in the preamble, under 12 U.S.C. 4526, FHFA proposes to amend Title 12 CFR Chapters IX, XII and XVII as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 913—[REMOVED]

1. Remove part 913.

CHAPTER XII—FEDERAL HOUSING FINANCE AGENCY

2. Add part 1204 to subchapter A.

PART 1204—PRIVACY ACT IMPLEMENTATION

Sec.

1204.1 Why did FHFA issue this part?
1204.2 What do the terms in this part mean?
1204.3 How do I Make a Privacy Act request?
1204.4 How will FHFA respond to my Privacy Act request?
1204.5 What if I am dissatisfied with the FHFA response to my Privacy Act request?
1204.6 What does it cost to get records under the Privacy Act?
1204.7 Are there any exemptions from the Privacy Act?
1204.8 How are records secured?
1204.9 Does FHFA collect and use Social Security numbers?
1204.10 What are FHFA employee responsibilities under the Privacy Act?

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

§ 1204.1 Why did FHFA issue this part?

FHFA issued this part to:

(a) Implement the Privacy Act of 1974, 5 U.S.C. 552a (Privacy Act), a Federal law that helps protect private information about individuals that Federal agencies collect or maintain. You should read this part together with the Privacy Act, which provides additional information about records maintained on individuals;

(b) Establish rules that apply to all FHFA maintained systems of records retrieved by an individual's name or other personal identifier;

(c) Describe procedures through which you may request access to records, request amendment or correction of those records, and request an accounting of disclosures of those records by FHFA;

(d) Inform you, that when it is appropriate to do so, FHFA automatically processes a Privacy Act request for access to records under both the Privacy Act and the FOIA, following the rules contained in this part and part 1202 of this subchapter so you will receive the maximum amount of information available to you by law; and

(e) Notify you that this regulation does not entitle you to any service or to the disclosure of any record to which you are not entitled under the Privacy Act. It also does not, and may not be relied upon to create any substantive or procedural right or benefit enforceable against FHFA.

§ 1204.2 What do the terms in this part mean?

The following definitions apply to the terms used in this part—

Access means making a record available to a subject individual.

Amendment means any correction of, addition to, or deletion from a record.

Court means any entity conducting a legal proceeding.

FHFA means the Federal Housing Finance Agency.

FHFB means the Federal Housing Finance Board.

FOIA means the Freedom of Information Act, as amended (5 U.S.C. 552).

Individual means a natural person who is either a citizen of the United States of America or an alien lawfully admitted for permanent residence.

Maintain includes collect, use, disseminate, or control.

OFHEO means the Office of Federal Housing Enterprise Oversight.

Privacy Act means the Privacy Act of 1974, as amended (5 U.S.C. 552a).

Privacy Act Appeals Officer means the FHFA employee who has been delegated the authority to determine Privacy Act appeals.

Privacy Act Officer means the FHFA employee who has primary responsibility for privacy and data protection policy and is authorized to determine Privacy Act requests.

Record means any item, collection, or grouping of information about an individual that FHFA maintains within a system of records, including, but not limited to, the individual's name, an identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

Routine use means the purposes for which records and information contained in a system of records may be disclosed by FHFA without the consent of the subject of the record. Routine uses for records are identified in each System of Records Notice. Routine use does not include disclosure that subsection (b) of the Privacy Act (5 U.S.C. 552a(b)) otherwise permits.

Senior Agency Official for Privacy means the FHFA employee delegated the authority and responsibility to oversee and supervise the FHFA privacy program and implementation of the Privacy Act.

System of records means a group of records FHFA maintains or controls from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. Single records or groups of records that are not retrieved by a personal identifier are not part of a system of records.

§ 1204.3 How do I make a Privacy Act request?

(a) *What is a valid request*? In general, a Privacy Act request can be made on your own behalf for records or information about you. You can make a Privacy Act request on behalf of another individual as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent. You also may request access to another individual's record or information if you have that individual's written consent, unless other conditions of disclosure apply (5 U.S.C. 552a(b)(1) through (12)).

(b) *How and where do I make a request*? Your request must be in writing. You may appear in person to submit your written request to the Privacy Act Officer, or send your written request to the Privacy Act Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov.* The regular mail address is: Privacy Act Officer, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006. The fax number is: (202) 408–2580. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet ''Privacy Act Request.''

(c) *What must the request include?* You must describe the record that you want in enough detail to enable the Privacy Act Officer to locate the system of records containing it with a reasonable amount of effort. Your request should include specific information about each record sought, such as the time period in which you believe it was compiled, the name or identifying number of each system of records in which you believe it is kept, and the date, title or name, author, recipient, and subject matter of the record. As a general rule, the more specific you are about the record that you want, the more likely FHFA will be able to locate it in response to your request.

(d) *How do I request amendment or correction of a record?* If you are requesting an amendment or correction of any FHFA record, you should identify each particular record in question and the systems of records in which the record is located, describe the amendment or correction that you want, and state why you believe that the record is not accurate, relevant, timely, or complete. You may submit any documentation that you think would be helpful, including an annotated copy of the record.

(e) *How do I request for an accounting of disclosures?* If you are requesting an accounting of disclosures by FHFA of a record to another person, organization, or Federal agency, you should identify each particular record in question. An accounting generally includes the date, nature, and purpose of each disclosure, as well as the name and address of the person, organization, or Federal agency to which the disclosure was made.

(f) *Must I verify my identity?* When making requests under the Privacy Act, your request must verify your identity to protect your privacy or the privacy of the individual on whose behalf you are acting. If you make a Privacy Act request and you do not follow these identity verification procedures, FHFA cannot process your request.

(1) *How do I verify my identity?* To verify your identity, you must state your full name, current address, and date and place of birth. In order to help identify and locate the records you request, you also may, at your option, include your Social Security number. If you make your request in person and your identity is not known to the Privacy Act Officer, you must provide either two forms of identification with photographs, or one form of identification with a photograph and a properly authenticated birth certificate. If you make your request by mail, your signature either must be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. You may fulfill this requirement by having your signature on your request letter witnessed by a notary or by including the following statement just before the signature on your request letter: ''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date].''

(2) *How do I verify parentage or guardianship?* If you make a Privacy Act request as the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, with respect to records or information about that individual, you must establish:

(i) The identity of the individual who is the subject of the record, by stating the individual's name, current address, date and place of birth, and, at your option, the Social Security number of the individual;

(ii) Your own identity, as required in paragraph (f)(1) of this section;

(iii) That you are the parent or guardian of the individual, which you may prove by providing a properly authenticated copy of the individual's birth certificate showing your parentage or a properly authenticated court order establishing your guardianship; and

(iv) That you are acting on behalf of the individual in making the request.

§ 1204.4 How will FHFA respond to my Privacy Act request?

(a) *How will FHFA locate the requested records?* FHFA will search to determine if requested records exist in the systems of records it owns or controls. You can find descriptions of FHFA systems of records on its Web site at *http://www.fhfa.gov,* or by linking to *http://www.ofheo.gov* and *http://www.fhfb.gov,* as appropriate. A description of the systems of records also is available in the ''Privacy Act Compilation'' published by the Office of the Federal Register of the National Archives and Records Administration. You can access the ''Privacy Act Compilation'' in most large reference and university libraries or electronically at the Government Printing Office Web site at: *http://www.gpoaccess.gov/privacyact/index.html.* You also can request a copy of FHFA systems of records from the Privacy Act Officer.

(b) *How long does FHFA have to respond?* The Privacy Act Officer generally will respond to your request in writing within 20 business days after receiving it, if it meets the requirements of § 1204.3 of this part. FHFA may extend the response time in unusual circumstances, such as when consultation is needed with another Federal agency (if that agency is subject to the Privacy Act) about a record or to retrieve a record shipped offsite for storage. If you submit your written request in person, the Privacy Act Officer may disclose records or information to you directly with a written record made of the grant of the request. If you are to be accompanied by another person when accessing your record or any information pertaining to you, FHFA may require your written authorization before permitting access or discussing the record in the presence of the other person.

(c) *What will FHFA response include?* The written response will include a determination to grant or deny your request in whole or in part, a brief explanation of the reasons for the determination, and the amount of the fee charged, if any, under § 1204.6 of this part. If you are granted a request to access a record, FHFA will make the record available to you. If you are granted a request to amend or correct a record, the response will describe any amendments or corrections made and advise you of your right to obtain a copy of the amended or corrected record.

(d) *What is an adverse determination?* An adverse determination is a determination on a Privacy Act request that:

(1) Withholds any requested record in whole or in part;

(2) Denies a request for an amendment or correction of a record in whole or in part;

(3) Declines to provide a requested accounting of disclosures;

(4) Advises that a requested record does not exist or cannot be located;

(5) Finds what has been requested is not a record subject to the Privacy Act; or

(6) Addresses any disputed fee matter.

(e) *What will be stated in a response that includes an adverse determination?* If the Privacy Act Officer makes an adverse determination with respect to your request, the written response under this section will state that the Privacy Act Officer is the person responsible for the adverse determination, that the adverse determination is not a final action of FHFA, and that you may appeal the adverse determination under § 1204.5 of this part.

§ 1204.5 What if I am dissatisfied with the FHFA response to my Privacy Act request?

(a) *May I appeal the response?* You may appeal any adverse determination made by the Privacy Act Officer in response to your Privacy Act request. If you wish to seek review by a court of any adverse determination or denial of a request, you first must appeal it under this section.

(b) *How do I appeal the response?* (1) You may appeal by submitting a written appeal stating the reasons you believe the adverse determination should be overturned. FHFA must receive your written appeal within 30 business days of the date of the Privacy Act Officer's determination under § 1204.4 of this part. Your written appeal may include as much or as little related information as you wish, as long as it clearly identifies the determination (including the request number, if known) that you are appealing.

(2) You should transmit your written appeal addressed to the Privacy Act Appeals Officer by electronic mail, regular mail, or fax. The electronic mail address is: *privacy@fhfa.gov.* The regular mail address is: Privacy Act Appeals Officer, Federal Housing Finance Agency, 1700 G Street, NW., Fourth Floor, Washington, DC 20552. The fax number is: (202) 414–6504. For the quickest possible handling, you should mark your electronic mail, letter, or fax and the subject line, envelope, or fax cover sheet ''Privacy Act Appeal.'' FHFA ordinarily will not act on an appeal if the Privacy Act request becomes a matter of Privacy Act litigation.

(c) *Who has the authority to grant or deny appeals?* The Privacy Act Appeals Officer is authorized to act on behalf of the Director on all appeals under this section.

(d) *When will FHFA respond to my appeal?* FHFA generally will respond to you in writing within 30 business days of receipt of an appeal that meets the requirements of paragraph (b) of this section, unless for good cause shown, the Director extends the response time.

(e) *What will the FHFA response include?* The written response will include the determination of the Privacy Act Appeals Officer; whether to grant or deny your appeal in whole or in part, a brief explanation of the reasons for the determination, and information about the Privacy Act provisions for court review of the determination.

(1) If your appeal concerns a request for access to records or information and the appeal determination grants your access, the records or information, if any, will be made available to you.

(2)(i) If your appeal concerns an amendment or correction of a record and the appeal determination grants your request for an amendment or correction, the response will describe any amendment or correction made to the record and advise you of your right to obtain a copy of the amended or corrected record under this part. FHFA will notify all persons, organizations, or Federal agencies to which it previously disclosed the record, if an accounting of that disclosure was made, that the record has been amended or corrected. Whenever the record is subsequently disclosed, the record will be disclosed as amended or corrected.

(ii) If the response to your appeal denies your request for an amendment or correction to a record, the response will advise you of your right to file a Statement of Disagreement under paragraph (f) of this section.

(f) *What is a Statement of Disagreement?* (1) A Statement of Disagreement is a concise written statement in which you clearly identify each part of any record that you dispute and explain your reason(s) for disagreeing with the Privacy Act Appeals Officer's denial in whole or in part of your appeal requesting amendment or correction. Your Statement of Disagreement must be received by the Privacy Act Officer within 30 business days of the Privacy Act Appeals Officer's denial in whole or in part of your appeal concerning amendment or correction of a record. FHFA will place your Statement of Disagreement in the system(s) of records in which the disputed record is maintained. FHFA also may append a concise statement of its reason(s) for denying the request for an amendment or correction of the record.

(2) FHFA will notify all persons, organizations, or Federal agencies to which it previously disclosed the disputed record, if an accounting of that disclosure was made, that the record is disputed and provide your Statement of Disagreement and the FHFA concise statement, if any. Whenever the disputed record is subsequently disclosed, a copy of your Statement of Disagreement and the FHFA concise statement, if any, will also be disclosed.

§ 1204.6 What does it cost to get records under the Privacy Act?

(a) *Must I agree to pay fees?* Your Privacy Act request is your agreement to pay all applicable fees, unless you specify a limit on the amount of fees you agree to pay. FHFA will not exceed the specified limit without your written agreement.

(b) *How does FHFA calculate fees?* FHFA will charge a fee for duplication of a record under the Privacy Act in the same way it charges for duplication of records under FOIA (5 U.S.C. 552) in 12 CFR 1202.11. There are no fees to search for or review records.

§ 1204.7 Are there any exemptions from the Privacy Act?

(a) *What is a Privacy Act exemption?* The Privacy Act allows the Director to exempt records or information in a system of records from some of the Privacy Act requirements, if the Director determines that the exemption is necessary.

(b) *How do I know if the records or information I want are exempt?* (1) Each notice of a system of records will advise you if the Director has determined records or information in records are exempt from Privacy Act requirements. If the Director has claimed an exemption for a system of records, the System of Records Notice will identify the exemption and the provisions of the Privacy Act from which the system is exempt. (2) Until superseded by FHFA Systems of Records, the following OFHEO and FHFB Systems of Records are, under 5 U.S.C. 552a(k)(2) or (k)(5), exempt from the Privacy Act requirements of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (e)(4)(H), (e)(4)(I), and (f):

(i) OFHEO–11 Litigation and Enforcement System;

(ii) FHFB–5 Agency Personnel Investigative Records; and

(iii) FHFB–6 Office of Inspector General Audit and Investigative Records.

§ 1204.8 How are records secured?

(a) *What controls must FHFA have in place*? Each FHFA office must establish administrative and physical controls to prevent unauthorized access to its systems of records, unauthorized or inadvertent disclosure of records, and physical damage to or destruction of records. The stringency of these controls should correspond to the sensitivity of the records that the controls protect. At a minimum, the administrative and physical controls must ensure that:

(1) Records are protected from public view;

(2) The area in which records are kept is supervised during business hours to prevent unauthorized persons from having access to them;

(3) Records are inaccessible to unauthorized persons outside of business hours; and

(4) Records are not disclosed to unauthorized persons or under unauthorized circumstances in either oral or written form.

(b) *Is access to records restricted?* Access to records is restricted only to authorized employees who require access in order to perform their official duties.

§ 1204.9 Does FHFA collect and use Social Security numbers?

FHFA collects Social Security numbers only when it is necessary and authorized. At least annually, the Privacy Act Officer or the Senior Agency Official for Privacy will inform employees who are authorized to collect information that:

(a) Individuals may not be denied any right, benefit, or privilege as a result of refusing to provide their Social Security numbers, unless the collection is authorized either by a statute or by a regulation issued prior to 1975; and

(b) They must inform individuals who are asked to provide their Social Security numbers:

(1) If providing a Social Security number is mandatory or voluntary;

(2) If any statutory or regulatory authority authorizes collection of a Social Security number; and

(3) The uses that will be made of the Social Security number.

§ 1204.10 What are FHFA employee responsibilities under the Privacy Act?

At least annually, the Privacy Act Officer or the Senior Agency Official for Privacy will inform employees about the provisions of the Privacy Act, including the Privacy Act's civil liability and criminal penalty provisions. Unless otherwise permitted by law, an authorized FHFA employee shall:

(a) Collect from individuals only information that is relevant and necessary to discharge FHFA responsibilities;

(b) Collect information about an individual directly from that individual whenever practicable;

(c) Inform each individual from whom information is collected of:

(1) The legal authority to collect the information and whether providing it is mandatory or voluntary;

(2) The principal purpose for which FHFA intends to use the information;

(3) The routine uses FHFA may make of the information; and

(4) The effects on the individual, if any, of not providing the information.

(d) Ensure that the employee's office does not maintain a system of records without public notice and notify appropriate officials of the existence or development of any system of records that is not the subject of a current or planned public notice.

(e) Maintain all records that are used in making any determination about an individual with such accuracy, relevance, timeliness, and completeness as is reasonably necessary to ensure fairness to the individual in the determination.

(f) Except for disclosures made under the FOIA, make reasonable efforts, prior to disseminating any record about an individual, to ensure that the record is accurate, relevant, timely, and complete.

(g) When required by the Privacy Act, maintain an accounting in the specified form of all disclosures of records by FHFA to persons, organizations, or Federal agencies.

(h) Maintain and use records with care to prevent the unauthorized or inadvertent disclosure of a record to anyone.

(i) Notify the appropriate official of any record that contains information that the Privacy Act does not permit FHFA to maintain.

CHAPTER XVII—OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

PART 1702—[REMOVED]

3. Remove part 1702.

Dated: May 8, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–11330 Filed 5–14–09; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 925

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1263

RIN 2590–AA18

Federal Home Loan Bank Membership for Community Development Financial Institutions

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

ACTION: Proposed rule.

SUMMARY: Pursuant to the requirements of the Federal Home Loan Bank Act (Bank Act), as amended by section 1206 of the Housing and Economic Recovery Act of 2008 (HERA), the Federal Housing Finance Agency (FHFA) proposes to amend its membership regulations to authorize non-federally insured, CDFI Fund-certified community development financial institutions (CDFIs) to become members of a Federal Home Loan Bank (Bank). The newly eligible CDFIs include community development loan funds, venture capital funds and state-chartered credit unions without federal insurance. This notice of proposed rulemaking sets out the eligibility and procedural requirements for CDFIs that wish to become members of a Bank.

DATES: FHFA will accept written comments on this proposed rule on or before July 14, 2009.

ADDRESSES: You may submit your comments on the proposed regulation identified by regulatory information number (RIN) 2590–AA18, by any *one* of the following methods:

- *U.S. Mail, United Parcel Post, Federal Express, or Other Mail Service:* The mailing address for comments is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA18, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivered/Courier:* The hand delivery address is: Alfred M. Pollard, General Counsel, Attention: Comments/RIN 2590–AA18, Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington DC 20552. The package should be logged at the Guard Desk, First Floor, on business days between 9 a.m. and 5 p.m.
- *E-mail:* Comments to Alfred M. Pollard, General Counsel may be sent by e-mail to *RegComments@fhfa.gov.* Please include ''RIN 2590–AA18'' in the subject line of the message.
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the Federal eRulemaking Portal, please also send it by e-mail to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency. Include the following information in the subject line of your submission: Federal Housing Finance Agency, Proposed Rule: Federal Home Loan Bank Membership for Community Development Financial Institutions, RIN 2590–AA18.

We will post all public comments we receive without change, including any personal information you provide, such as your name and address, on the FHFA Web site at *http://www.fhfa.gov.*

FOR FURTHER INFORMATION CONTACT: Sylvia Martinez, Senior Policy Analyst/Adviser, 202–408–2825, *sylvia.martinez@fhfa.gov;* Amy Bogdon, Senior Advisor, 202–408–2546, *amy.bogdon@fhfa.gov,* Division of Federal Home Loan Bank Regulation; Deattra Perkins, Community Development Specialist, 202–408–2527, *deattra.perkins@fhfa.gov,* Division of Housing Mission and Goals. For legal questions contact Sharon B. Like, Associate General Counsel, 202–414–8950, *sharon.like@fhfa.gov.* You can send regular mail to the Federal Housing Finance Agency, Fourth Floor, 1700 G Street, NW., Washington DC 20552. The telephone number for the Telecommunications Device for the Deaf is 800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory and Regulatory Background

Effective July 30, 2008, Division A of HERA, Public Law No. 110–289, 122 Stat. 2654 (2008), titled the Federal Housing Finance Regulatory Reform Act of 2008, created FHFA as an independent agency of the Federal Government. HERA transferred supervisory and oversight responsibilities over the Federal National Mortgage Association (Fannie Mae), the Federal Home Loan Mortgage Corporation (Freddie Mac), and the Federal Home Loan Banks (collectively, Regulated Entities) from the Office of Federal Housing Enterprise Oversight (OFHEO) and the Federal Housing Finance Board (FHFB) to FHFA. The Regulated Entities continue to operate under regulations promulgated by OFHEO and FHFB until such time as the existing regulations are supplanted by regulations promulgated by FHFA.

Each Bank is a cooperative institution that is owned by its members, all of which must comply with certain statutory requirements in order to become members. To be eligible for Bank membership, an applicant must be one of the several types of financial institutions listed in section 4(a)(1) of the Bank Act, must meet certain other eligibility criteria, and must purchase stock of the Bank, as set forth in sections 4 and 6 of the Bank Act. *See* 12 U.S.C. 1424, 1426. The existing FHFB regulation implementing the membership eligibility and minimum stock purchase provisions of the Bank Act (Membership Regulation) is codified at 12 CFR part 925. The proposed rule would relocate part 925 in its entirety to part 1263, and would amend certain provisions of the existing Membership Regulation to accommodate the addition of CDFIs to the institutions that may become Bank members.

As a threshold matter, in order to be eligible for Bank membership, an applicant must be authorized under federal or state law to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied for membership. Prior to amendment by HERA, section 4(a)(1) provided that any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or federally insured depository institution (including credit unions) was eligible to become a Bank member. Thus, until HERA was enacted a CDFI could not become a member of a Bank unless it also was a federally insured depository institution, such as a community development bank, thrift or credit union. As of September 30, 2008, 125 such depository institution CDFIs had become members of the Bank System. Section 1206 of HERA amended section 4(a)(1) to make all CDFIs that are certified by the CDFI Fund of the US Department of the Treasury under the Community Development Banking and Financial Institutions Act of 1994 (CDFI Act) eligible to become members of a Bank. *See* 12 U.S.C. 1424(a)(1) (as amended). Thus, loan funds, venture capital funds and state-chartered credit unions without federal deposit insurance are now eligible for Bank membership provided they are certified by the CDFI Fund and have the authority under state law to do those things necessary to become a member, *i.e.,* to buy Bank stock, borrow and pledge collateral. The proposed rule would apply only to those newly eligible institutions. CDFIs that also are eligible for membership because they are federally insured depository

institutions would continue to follow the existing rules relating to membership for depository institutions.

All institutions that are eligible for membership under section 4(a)(1) also must comply with certain additional criteria specified in section 4(a)(1) and (2) in order to be approved for membership. Specifically, under section 4(a)(1), as amended by HERA, an applicant must demonstrate that it: (a) Is duly organized under state or federal law; (b) either is subject to inspection and regulation under banking or similar laws or is certified as a CDFI under the CDFI Act; and (c) makes such home mortgage loans as are long-term loans. In addition, under section 4(a)(2), an insured depository institution applicant must: (a) Have at least 10 percent of its total assets in residential mortgage loans (unless it qualifies as a ''community financial institution'') [1]; (b) be in sound financial condition such that a Bank may safely make advances to it; (c) have a character of management that is consistent with sound and economical home financing; and (d) have a home-financing policy that is consistent with sound and economical home financing. 12 U.S.C. 1424(a)(1), (2).

The existing Membership Regulation expands on those statutory requirements and further establishes a review and approval process for applications for membership in a Bank. *See* 12 CFR 925.2, 925.3. Any institution seeking membership in a Bank is required to submit an application to the Bank for approval.[2] The Membership Regulation also includes separate provisions governing the admission of depository institutions and insurance companies, respectively, recognizing that each type of institution operates under a different business model and a different regulatory structure. The proposed rule would follow a similar approach for CDFIs, and would establish separate provisions for CDFI applicants, recognizing that they too operate in a different environment and under a different regulatory structure. The proposed rule would delineate the documentation and other information that a CDFI applicant must submit to a Bank as part of a membership application, as well as the standards that a CDFI applicant must meet in order to be deemed to have satisfied the various statutory and regulatory requirements for membership.[3]

Once a Bank has approved a CDFI for membership, the CDFI must purchase the required amount of Bank stock in order to complete the process of becoming a member of the Bank. *See* 12 U.S.C. 1426. The specific amount of stock that any new member, including a CDFI, must purchase is set out in each Bank's capital structure plan, and will vary from Bank to Bank.[4] Typically, an institution must purchase a certain amount of stock in order to become a member, and may be required to purchase additional stock in order to borrow from the Bank or to obtain other services from the Bank. In addition to purchasing stock, any member, including a CDFI, that wishes to borrow from its Bank must pledge certain types of collateral to secure its repayment obligation, and must otherwise demonstrate to the Bank that it is creditworthy. Under the Bank Act, a member may pledge only the following types of collateral for an advance: (a) Fully disbursed, whole first mortgages on improved residential property not more than 90 days delinquent, or securities representing a whole interest in such mortgages; (b) securities issued, insured or guaranteed by the U.S. Government or any agency thereof; (c) cash or deposits of a Bank; (d) other real estate-related collateral acceptable to the Bank, provided its value is readily ascertainable and the Bank can perfect its interest; and (e) for institutions that qualify as ''community financial institutions,'' secured loans for small business, agriculture or community development activities, or securities representing a whole interest in such secured loans. *See* 12 U.S.C. 1430(a)(3) (as amended). Each Bank sets its own lending and collateral policies, which may vary from Bank to Bank and which will apply to all borrowing members of that Bank.

Under the Bank Act and FHFA regulations, all members also must comply with certain community investment and first-time homebuyer lending standards in order to maintain access to long-term advances. *See* 12 U.S.C. 1430(g)(2); 12 CFR part 944. As discussed below, FHFA believes that any CDFI that becomes a member of a Bank should be able to satisfy the current community support requirements and therefore is not proposing to establish community support requirements unique to CDFIs, but welcomes comment on whether certain CDFIs may have difficulties in complying with the current requirements that would warrant establishing separate community support standards for CDFIs.

B. CDFIs

CDFIs are private nonprofit and for-profit financial institutions providing financial services dedicated to economic development and community revitalization in underserved markets. The CDFIs comprise diverse institutional structures and business lines. The four categories of institutions eligible for CDFI certification and CDFI Fund financial support are: (1) Federally regulated insured depository institutions and holding companies (bank CDFIs); (2) credit unions, whether federally or state chartered; (3) community development loan funds, which are unregulated institutions specializing in financing of housing, businesses or community facilities that provide health care, childcare, educational, cultural or social services; and (4) community development venture capital funds, which are unregulated institutions that provide equity and debt-with-equity-features to small and medium-sized businesses in distressed communities.

The CDFIs serve as intermediary financial institutions that promote economic growth and stability in low-and-moderate-income communities. A large number are not-for-profit community development organizations with a long history of providing lending and services to low-and-moderate-income communities. They provide a unique range of financial products and services, such as mortgage financing for low-income and first-time homebuyers; homeowner or homebuyer counseling; financing for not-for-profit affordable housing developers; flexible underwriting and risk capital for needed community facilities; financial literacy training; technical assistance; and commercial loans and investments to assist small start-up businesses in low-income areas. Some CDFIs provide

[1] A ''community financial institution'' is a depository institution that is insured by the Federal Deposit Insurance Corporation and has average total assets of $1 billion or less. 12 U.S.C. 1422(10) (as amended). This proposed rulemaking does not affect the terms under which a ''community financial institution'' may become a member of a Bank.

[2] *See* 12 CFR 925.2(a). Generally speaking, an institution is eligible to become a member only of the Bank of the district in which its principal place of business is located. An institution is deemed to be located in the state in which it maintains its home office, established as such in conformity with the laws under which the institution is organized. *See* 12 CFR 925.18.

[3] Although the proposed rule includes provisions relating to the financial condition of a CDFI applicant, those provisions are threshold requirements for admission to membership. As is the case with respect to all other members, a Bank will typically conduct a more thorough analysis of a CDFI's financial condition and the adequacy of its collateral when determining whether to make advances to such members.

[4] Because the Chicago Bank has not yet implemented its capital structure plan, any CDFI that becomes a member of that Bank must purchase stock in the amount specified by 12 CFR 1263.20 of the proposed rule, which carries over the provisions from 12 CFR 925.20 of the existing rules.

community facilities such as child care centers alongside affordable housing.

Frequently, CDFIs serve communities that are underserved by conventional financial institutions and may offer products and services that are not available from conventional financial institutions. Their lending and community support activities are thus consistent with the Banks' housing mission. By stabilizing the communities in a Bank's District, CDFIs can provide added value to that Bank as well as its members.

There is no single source of information covering all CDFIs, but reports from the CDFI Fund and other organizations provide a picture of the industry. A 2007 study by Abt Associates,[5] which included both certified and uncertified CDFIs, estimated that there were as many as 1,122 CDFIs throughout the country in 2005. The CDFI Fund reported that there were 804 certified CDFIs as of March 1, 2008.[6] Loan funds, most of which are nonprofit organizations, accounted for 68 percent of the certified CDFIs. Eighteen percent of certified CDFIs were credit unions, 10 percent were banks or holding companies, and 3.5 percent were community venture funds.

CDFIs are generally small in asset size. The CDFI Fund reported that the average asset size for certified CDFIs was $32 million for depository institutions and $22.5 million for non-depository institutions.[7] Despite the typical CDFI's relatively small asset size, studies demonstrate meaningful impact to low-and-moderate income communities by these intermediaries. The CDFIs provide diverse financial services and other benefits to urban, rural and Native communities. A 2003–2005 trend analysis by the CDFI Fund[8] reported that its sample of CDFIs financed over 90,000 units of housing, 80,000 of which were affordable housing units. This group of CDFIs also provided financing and counseling for over 12,000 first-time homebuyers over this period. The Opportunity Finance Network, a trade association of 160 CDFI members, reports that over the past 20 years, its members financed over 533,394 housing units.[9] Given the credit conditions across the country, demand for CDFI products and services is expected to increase. In a recent survey conducted by the Opportunity Finance Network, CDFI respondents reported an increase in demand for their products as a result of the declining availability of bank credit.[10] However, one common problem facing non-depository CDFIs is that they do not have access to long-term funding, limiting their ability to provide housing finance to their communities.

The CDFI Fund of the U.S. Treasury was created to promote economic revitalization and community development through investment in and financial and technical assistance to CDFIs. *See* 12 U.S.C. 4701(b). The CDFI Fund promotes these purposes through several programs, including the CDFI Program, the New Markets Tax Credit Program, the Bank Enterprise Award Program and Native Initiatives. *See* 12 U.S.C. 4701 *et seq.*; 12 CFR part 1805; *http://www.cdfifund.gov.*

An institution must apply to the CDFI Fund in order to receive awards under its programs. *See* 12 U.S.C. 4704; 12 CFR 1805.200. To receive a CDFI award, an institution must be certified by the CDFI Fund as a qualifying CDFI under the CDFI Act. An institution may apply for CDFI certification at any time. If an organization is already certified as a CDFI, the CDFI Fund may require as a condition for receiving an award, that a CDFI submit a Certification of Material Events form attesting that there has been no occurrence that affects the organization's strategic direction, mission or business operation and, thereby, its status as a CDFI. An applicant for CDFI certification must meet each of the following general requirements in order to be certified as a CDFI:

(i) Is a legal entity at the time of certification application;

(ii) Has a primary mission of promoting community development;

(iii) Is a financing entity;

(iv) Principally serves an economically distressed area, low-income population, or other population that lacks access to financing (known as an eligible ''target market'');

(v) Provides technical assistance, training or other development services in conjunction with its financing activities;

(vi) Is accountable to its target market through representation on its board or other means; and

(vii) Is a non-governmental entity that is not controlled by one or more governmental entities (Tribal governments excluded).

See 12 U.S.C. 4702(5); 12 CFR 1805.201.

The CDFI certification eligibility requirements are more fully elaborated in the CDFI program regulations. *See* 12 CFR 1805.201. The CDFI Fund is not a regulator of CDFIs, and does not evaluate their safety and soundness during either the certification or awards application processes at the level that would be conducted by a financial safety and soundness regulator. The CDFI Fund regulations further state that a CDFI certification does not constitute an opinion by the CDFI Fund as to the financial viability of the certified CDFI or that the CDFI will be selected to receive an award from the CDFI Fund. *See* 12 CFR 1805.201(a). Thus, receipt of a certification or award alone does not indicate that a CDFI is financially sound, but only that it meets the certification or award eligibility criteria.

C. HERA Section 1201

Section 1201 of HERA requires the FHFA Director to consider the differences between the Banks and the Enterprises in rulemakings that affect the Banks with respect to the Banks' cooperative ownership structure, mission of providing liquidity to members, affordable housing and community development mission, capital structure and joint and several liability. *See* 12 U.S.C. 4513(f). In preparing the proposed rule, the Director considered these factors and determined that the rule is appropriate, particularly because the proposed amendments would implement statutory provisions of the Bank Act that apply only to the Banks. *See* 12 U.S.C. 1424(a). Nonetheless, FHFA requests comments about whether these factors should result in a revision of the proposed amendment as it relates to the Banks.

[5] *See* Abt Associates, *Assessment of Community Development Financial Institutions Fund (CDFI) Training Program, Training Program & CDFI Certification,* August 17, 2007 (p.2). This estimate is based on a list of CDFIs that either were included in one of the CDFI Fund's databases or had received a CDFI Data Project (CDP) survey in the past three years.

[6] Community Development Financial Institutions Fund, ''*Overview. CDFI Fund Director's presentation before the National Interagency Community Reinvestment Conference.''* San Francisco: Federal Reserve Bank of San Francisco, April 1, 2008.

[7] Community Development Financial Institutions Fund, ''*Overview.''* Presented April 1, 2008.

[8] Community Development Financial Institutions Fund, *Three Year Trend Analysis of Community Investment Impact System Institutional Level Report Data FY 2003–2005.* US Department of the Treasury. December 2007. The report includes data for 2003 from 223 CDFIs, for 2004 from 236 CDFIs and for 2005 from 173 CDFIs.

[9] Opportunity Finance Network, *Overview: About Opportunity Finance Network. See http://www.opportunityfinance.net/about/about.aspx.* Accessed on December 15, 2008.

[10] Opportunity Finance Network, *Findings from the Third Quarter 2008 CDFI Market Conditions Survey,* October 2008.

II. Analysis of Proposed Rule

A. Relocation of Membership Regulation to Part 1263

The proposed rule would relocate the Membership Regulation in its entirety from part 925 of the FHFB regulations to part 1263 of the FHFA regulations. The proposed rule also would amend certain provisions of the relocated Membership Regulation to allow CDFIs to become Bank members. Although those amendments are not evident from the regulatory text of the proposed rule because the provisions are being relocated in their entirety, any material revisions to the regulatory text are discussed in this preamble.

B. Scope of the Proposed Regulation

As noted previously, approximately 125 depository institutions that also are CDFIs have already become members of a Bank by virtue of their status as federally insured depository institutions. Under the terms of this proposed rule, any such institutions that seek to become members of a Bank in the future would be required to follow the existing membership regulations and procedures applicable for insured depository institutions. The amendments embodied in this proposed rule are intended to apply only to those types of CDFIs that were not eligible for membership prior to the passage of HERA, such as loan funds, venture capital funds and credit unions with state or private insurance.

C. Definitions

Consistent with the scope of the proposed regulation, FHFA is proposing to amend the definitions section of the Membership Regulation by revising existing definitions and adding new definitions to reflect the statutory changes related to CDFI members. Thus, section 1263.1 of the proposed rule defines ''community development financial institution'' and ''CDFI'' to include any institution that is certified as a CDFI by the CDFI Fund of the U.S. Department of the Treasury, other than a bank or savings association that is insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) or a credit union that is insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*). Because federally insured depository institutions and credit unions already are eligible for membership under the pre-HERA law, the definition of CDFI excludes those institutions. The proposal also defines ''CDFI credit union'' as a state chartered credit union that has been certified by the CDFI Fund and does not have federal deposit insurance. The CDFI credit unions are the only types of depository institution that are affected by the HERA CDFI amendments and, for reasons stated below, those entities will be evaluated for financial condition under the same provisions that currently apply to state chartered credit unions that are currently eligible for membership because they are insured by the National Credit Union Administration (NCUA).

The proposed rule also adds or revises several other definitions in order to accommodate the admission of CDFIs to Bank membership. Those defined terms are ''appropriate regulator,'' ''CDFI Fund,'' ''gross revenues,'' ''operating expenses,'' ''restricted assets,'' ''total assets,'' and ''unrestricted cash and cash equivalents.'' The proposal would revise the existing definition of ''appropriate regulator'' to add CDFI credit unions to the list of financial institutions included within the current rule. As noted previously, FHFA is proposing to subject CDFI credit unions to the same financial condition provisions that apply to state chartered credit unions that are insured by the NCUA, and these definitions are consistent with that approach. Most of the other new definitions relate to terms that are used elsewhere in the proposal to measure the financial condition and performance of those CDFIs that are not subject to state or federal regulation. Generally speaking, these financial definitions are intended to reflect the terms used in the financial performance standards employed by the CDFI Fund or by third-party auditors experienced in assessing the financial performance of the CDFIs. FHFA requests comments on whether the proposed definitions are appropriate in the context of assessing the financial condition of CDFI applicants.

Apart from those new or revised definitions, the proposed rule carries over into part 1263 all of the existing definitions from the Membership Regulation, some of which include minor clarifying or technical changes.

D. Application Process

Subpart B of the current Membership Regulation includes several provisions—§§ 925.2 to 925.5—relating to the process for the submission and consideration of applications for membership. The proposed rule would relocate all of those provisions without substantive change to proposed §§ 1263.2, 1263.3, 1263.4, and 1263.5, respectively. The proposed rule would make minor changes to certain of those provisions, none of which are intended to change the substance of those provisions.

E. Eligibility Requirements

Subpart C of the current Membership Regulation includes 13 provisions relating principally to the eligibility requirements for membership and how they are to be applied to the various types of institutions that may become members of a Bank. Some of these regulatory provisions are readily applicable to CDFIs in the same manner as other financial institutions, but others require some adaptation to reflect the unique characteristics of CDFIs. The proposed rule would amend certain of these provisions to address the statutory changes that have allowed CDFIs to become members. In proposing these amendments, FHFA has sought to develop regulatory standards that recognize the unique characteristics of CDFIs and the valuable contribution they make to their communities, while remaining sufficiently rigorous to comply with the statutory requirements.

General eligibility requirements. Section 4(a)(1) of the Bank Act requires that all applicants for Bank membership meet certain requirements for membership. These requirements are currently listed in § 925.6(a) of the Membership Regulation and are being retained in the proposed rule at proposed § 1263.6(a). With respect to proposed § 1263.6(a), the only change to the existing regulatory text would be to add ''community development financial institution'' to the list of entities eligible for membership. As discussed above, that term has been defined to exclude federally insured depository institutions and credit unions, because such institutions are already authorized to become Bank members.

Section 4(a)(2) of the Bank Act further requires any ''insured depository institution'' applicant to have at least 10 percent of its assets in residential mortgage loans, be in sound financial condition, and have sound management and home financing policy. 12 U.S.C. 1424(a)(2). The term ''insured depository institution'' is defined in the Bank Act to include any federally-insured bank, savings association or credit union, and thus does not include the newly-eligible CDFIs or insurance companies. *See* 12 U.S.C. 1422(9). Nonetheless, the Bank Act does not preclude FHFA from applying these concepts to other types of applicants, based on its authority to ensure that the Banks operate in a safe and sound manner and carry out their public policy missions. Indeed, FHFA's predecessor agency, FHFB, exercised that authority to require all applicants without federal deposit insurance, *i.e.,* insurance companies, to have mortgage-

related assets that reflect a commitment to housing finance. 12 CFR 925.6(c); *See* 58 FR 43522 (Aug. 17, 1993). FHFB reasoned that such an approach treated all applicants in an equitable and consistent manner, and was consistent with the housing finance mission of the Banks. *See id.* at 43531–43533. FHFA believes that rationale can apply as well to the newly eligible CDFI applicants, and thus is proposing to require such CDFI applicants to have mortgage related assets that reflect a commitment to housing finance. FHFA expects that the Banks will assess the commitment to housing finance requirements in light of the unique community development focus of the business of CDFIs. Because the language of the current regulation already applies to any applicant that is not an insured depository institution, no amendment to proposed § 1263.6(c) is necessary to affect this change.

In a similar manner, the proposed rule would require the newly eligible CDFI applicants to satisfy requirements relating to financial condition, character of management and home financing policy. When FHFB extended those provisions to insurance companies, it reasoned that they were sufficiently important to concepts of safety and soundness and the housing finance mission to warrant doing so. *See* 58 FR at 43533. FHFA believes that the same rationale should apply to the newly eligible category of CDFI applicants. Thus, the proposed rule would retain the provisions within Subpart C, which would be amended as necessary to implement the CDFI provisions of HERA. The amendments to particular provisions within Subpart C are discussed separately below.

Duly organized requirement. Section 4(a)(1)(A) of the Bank Act requires that an applicant for membership be duly organized under the laws of any state or of the United States. 12 U.S.C. 1424(a)(1)(A). Section 1263.7 of the proposed rule would amend the current language of § 925.7, which implements this provision, to provide that a newly eligible CDFI applicant shall be deemed to be duly organized if it is incorporated under state law. The current regulation allows an applicant to satisfy this provision if it is chartered as one of several types of depository institutions or as an insurance company. Because most CDFIs will not have such a charter, FHFA believes that being incorporated under state law is sufficient to demonstrate that a CDFI meets this requirement of the statute.

Inspection and regulation requirement. Section 4(a)(1)(B) of the Bank Act generally requires an applicant for membership to be subject to inspection and regulation under state or federal banking or similar laws. In the case of a CDFI, the statute imposes an alternative requirement, which is that the applicant be certified by the CDFI Fund. *See* 12 U.S.C. 1424(a)(1)(B). Accordingly, newly-eligible CDFI applicants are not required to meet the inspection and regulation requirement and, therefore, there is no need to amend the existing regulatory language, which would be carried over into proposed § 1263.8. As discussed earlier, the requirement that a CDFI applicant be certified by the CDFI Fund in order to be eligible for membership is addressed by the definition of ''CDFI'' in proposed § 1263.1. The proposed rule, however, does make certain clarifying revisions to the existing regulation text of proposed § 1263.8, which are not intended to alter the substance of the provision.

Long-term mortgage loans requirement. Section 4(a)(1)(C) of the Bank Act requires that an applicant for membership make long-term home mortgage loans. 12 U.S.C. 1424(a)(1)(C). ''Long-term'' is defined in § 925.1 to include loans with a term to maturity of five years or greater. 12 CFR 925.1. ''Home mortgage loan'' is defined in § 925.1 to include, among other things, first mortgages on one-to-four family or multifamily property, and mortgage pass-through securities backed by such mortgages. *See id.* Section 925.9 of the Membership Regulation, which implements these provisions, provides that an applicant is deemed to meet this requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant originates or purchases long-term home mortgage loans. 12 CFR 925.9. Some newly-eligible CDFI applicants, such as loan funds and venture capital funds, do not file regulatory financial reports. Accordingly, proposed § 1263.9 would amend the existing language to provide that a Bank shall determine whether a CDFI applicant meets the ''makes long-term home mortgage loans'' requirement based on other documentation provided to the Bank, and contemplates that a Bank can decide what level of documentation can best allow it to determine whether a particular type of CDFI satisfies this requirement.

Financial condition requirements. The current Membership Regulation includes two separate provisions relating to the financial condition of applicants for membership. Section 925.11 relates to depository institutions (which includes federally insured state chartered credit unions), while § 925.16 relates to insurance companies. The proposed rule would relocate those provisions to proposed §§ 1263.11 and 1263.16, respectively, and would amend both of them to incorporate language relating to CDFI applicants.

In proposed § 1263.11, FHFA would require CDFI credit unions to comply with the same financial condition requirements that currently apply to state chartered credit unions that are insured by the NCUA.[11] All credit unions chartered by a particular state operate under the same state laws and regulations. All are subject to oversight by the same state regulatory agency and would have the same financial reporting and examination requirements at the state level. Thus, for this category of CDFI, FHFA believes that it is most appropriate for the Banks to evaluate financial condition under the same regulatory provisions that apply to all other credit union and depository institution applicants. Those provisions are set out in proposed § 1263.11(a) and (b) and require the Banks to evaluate the financial condition of the applicants based on information in the regulatory financial reports they file with their applicable regulators, their audited financial statements, and the examination reports prepared by their regulators. The key distinction for CDFI credit unions is that they are not subject to oversight by the NCUA and consequently do not file financial regulatory reports with the NCUA. Nonetheless, the CDFI credit unions should file comparable reports with their appropriate state regulator, and FHFA believes that those documents can be used by the Banks to assess the financial condition of the CDFI credit unions, applying the same criteria as in the existing regulations. To the extent that any state chartered credit unions without NCUA insurance may not in fact file regulatory financial reports with their state regulator that are comparable to those filed by NCUA-regulated credit unions, or are not required to have audited financial statements or submit to regulatory examinations, FHFA requests comments on what other documentation such entities would prepare that would provide the Banks with comparable information about their financial condition.

To bring the CDFI credit unions within the scope of the current financial condition requirements for depository institutions, the proposed rule would amend the existing regulatory text in two locations. The first amendment

[11] As of December 31, 2008, 955 credit unions were members of the Bank System. Of that number, 476 are state chartered and 479 are federal credit unions.

would revise proposed § 1263.11(a) to list the types of depository institutions that are subject to its provisions and to include CDFI credit unions within that list. The second amendment would add a new provision, proposed § 1263.11(b)(3)(iii), which would require all CDFI credit unions to meet certain performance trend criteria. Under the current regulation, the only depository institutions that must satisfy those criteria are institutions with a composite examination rating of ''2'' or ''3''. Because the CDFI credit unions are not subject to oversight by the NCUA and because the Banks may be less familiar with state examination ratings, FHFA believes that it is prudent to require all such CDFI credit unions to demonstrate that their earnings, nonperforming assets, and allowance for loan and lease losses are consistent with the existing performance criteria. Apart from those amendments, proposed § 1263.11 would retain all of the language from the existing § 925.11. FHFA requests comments on whether the application of these standards is appropriate for CDFI credit unions and whether the nature or extent of oversight and examination by a state regulator differs in any manner that would require any of the provisions in this section to be modified. For example, the current rule requires the submission of quarterly regulatory financial reports and information from a regulatory examination report. To the extent that any state chartered CDFI credit unions might not have quarterly reports, financial statements audited by a certified public accountant or regulatory examination reports, FHFA seeks information on the types of financial condition statements and regulatory reports that such entities do submit and what types of examination and rating are provided by the state regulators.

For all other CDFIs, such as CDFI loan funds and venture capital funds, FHFA is proposing new financial condition requirements. These requirements would be incorporated into the existing provisions relating to insurance companies, set out in proposed § 1263.16(b). Institutions in this category of CDFIs are not subject to the same degree of state or federal oversight as are depository institutions and insurance companies. Thus, they may not be able to provide the Banks with documentation similar to examination reports or periodic regulatory financial reports to aid the Banks in assessing their financial condition. Although these CDFIs will have been certified by the CDFI Fund, that process does not include an assessment of the CDFI's financial condition. Moreover, the type and extent of available financial documentation will differ for the various categories of CDFIs. Although some CDFI loan funds and venture capital funds may be able to obtain private ratings that would be analogous to those relating to depository institutions, those are not routinely generated. Because of those differences, FHFA is proposing to establish separate financial documentation requirements and approval standards for assessing the financial condition of this category of CDFIs, which are intended to be analogous to those applicable to other applicants, while taking into account the unique characteristics of CDFIs.

The structure of proposed § 1263.16(b) would generally parallel that used for depository institutions, *i.e.,* the regulation would identify the types of financial documents that a Bank must review in assessing a CDFI's financial condition and would establish standards for determining whether an applicant's financial condition is sufficiently sound to admit it to Bank membership. Those amendments are described below.

Section 1263.16(b)(1) of the proposed rule would specify two categories of financial documents that a Bank must obtain and review when assessing a CDFI's financial condition, and would authorize a Bank to request any additional documents that it deems necessary to assessing the financial condition of the CDFI applicant. The first category of documentation relates to financial statements, and requires the submission of an independent audit that has been conducted within the prior year by a certified public accounting firm, in accordance with generally accepted auditing standards (GAAS), as well as more recent quarterly financial statements, if those are available. An applicant also must submit financial statements for the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statements for the most recent year also must include detailed disclosures or schedules relating to the affiliates of the CDFI applicant regarding the financial position of each affiliate, their lines of business, and the relationship between the affiliates and the applicant CDFI.

FHFA believes that the use of a GAAS-consistent audited financial statement is a uniform and reliable means by which an applicant can demonstrate to a Bank that it is in sound financial condition, particularly in the absence of the regulatory financial and examination reports that the Banks typically consider in evaluating other depository institutions and insurance companies for membership. Nonetheless, FHFA requests comments on whether there might be alternatives to GAAS-compliant audited financial statements that would allow a Bank to assess accurately the financial condition of a CDFI applicant. If certain CDFIs do not typically obtain audited financial statements, FHFA might consider allowing the Banks to use alternative financial statements, but asks that any persons recommending such alternatives provide detailed information about the quality of such alternatives and the frequency at which they would be prepared. Examples of such alternatives might include financial statements that, while not prepared by a certified public accounting firm, would be substantially similar to audited financial statements, or financial statements prepared by a CDFI that have some other means of assuring that they accurately present its financial condition. FHFA will consider allowing the use of such alternative financial statements in the final rule if it can be reasonably assured that the Banks can rely on them to determine that the CDFI applicant is in sound financial condition.

Section 1263.16(b)(1)(ii) and (iii) of the proposed rule further requires a CDFI applicant to provide the Bank with a copy of the certification it has received from the CDFI Fund, as well as any other financial information concerning its financial condition that is requested by the Bank. With respect to the issue of certification, each CDFI applicant generally must provide a certification issued by the CDFI Fund no more than three years prior to the date of the CDFI's application for Bank membership. If an applicant's CDFI certification does not meet that requirement, the applicant must submit to the Bank a written statement that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations, and thereby its status as a CDFI.

Section 1263.16(b)(2) of the proposed rule sets out minimum financial condition standards that a CDFI must meet in order to become a member of a Bank. Those standards relate to net assets, earnings, loan loss reserves, and liquidity, and are described below.

Net asset ratio. The proposed rule would require that a CDFI applicant have a ratio of net assets to total assets

of at least 20 percent, which is intended to address the capital adequacy of the CDFI. For purposes of this provision, ''net assets'' is to be calculated as the residual value of assets (including restricted assets) over liabilities and is to be based on information derived from the applicant's most recent financial statements.

FHFA is proposing this approach because it understands that the inclusion of restricted assets within net assets is consistent with the approach used by the CDFI Fund and others in the CDFI industry, as well as with the accounting standards for nonprofit entities. Restricted assets typically appear on CDFI balance sheets when donor or government funds are specifically designated as capital, and are thereby ''restricted'' as to their possible uses. When used in this manner, the capital may be classified as restricted, but it is nonetheless available to absorb any losses. For example, the CDFI Fund commonly awards funding for loan loss reserves, which may serve to lower a CDFI's borrowing costs. FHFA requests comment on the inclusion of restricted assets in the net asset ratio, and on the proposed use of a minimum net asset ratio of 20 percent for membership eligibility.

Earnings. The proposed rule would require a CDFI applicant to demonstrate that it has some earnings capacity. Thus, an applicant must show that it has generated a positive net income for any two of the three most recent years. For purposes of this provision, net income would be defined as gross revenues less total expenses, based on information derived from the applicant's most recent financial statements. In the definitions section of the regulation, the proposal defines ''gross revenues'' to mean total revenues received from all sources, including earnings from operations, grants and other donor contributions. This requirement is adapted from the earnings requirement for insured depository institutions in the current regulation, which requires that the applicant's adjusted net income be positive in four of the six most recent calendar quarters. Because CDFIs may not typically file quarterly regulatory reports, and generally obtain an audit of their financial statements only once a year, FHFA proposes to require that earnings be positive in two of the three most recent years, rather than four of the six most recent calendar quarters. FHFA requests comment on the appropriateness of this measure of earnings and on the proposed minimum eligibility standard.

Loan loss reserves. The proposed rule would require that an applicant's ratio of loan loss reserves to loans and leases 90 or more days delinquent, including loans sold with full recourse, be not less than 30 percent. The information to determine compliance with this provision should be derived from the applicant's most recent financial statements. Loan loss reserves, which help the CDFIs self-insure against losses, are defined within this provision to mean a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible. The proposed rule is intended to provide a flexible and relative standard, to acknowledge the CDFIs' mission and loan origination practices while also requiring a buffer to protect the organization's continued solvency and ongoing operation. The 30 percent threshold is half of the requirement that would apply to depository institution applicants. FHFA is proposing to allow the lower ratio in recognition of a historically lower delinquency rate among CDFI-originated loans, which have performed equal to or better than prime loans. As noted, the CDFIs' fundamental mission is to stabilize communities. Most CDFIs hold the loans they make and, consequently, the risk in portfolio. These two conditions prompt the use of careful underwriting, intensive homeowner and financial counseling, and subsidies to assure borrower affordability. CDFIs have the ability to modify a loan in response to a borrower's adverse life event, thus preventing a foreclosure. Given these unique circumstances, lower loan loss reserves would permit more capital to go to borrowers. However, given current housing market conditions, FHFA requests comment on the appropriateness of the proposed loan loss reserve measure, the rationale for the different standard for CDFIs, or whether there are any alternative standards that might also serve this purpose.

Liquidity ratio. The proposed rule would require that an applicant's operating liquidity ratio be no less than 1.0 for the current year, *i.e.,* the year during which a CDFI applies for membership, as well as in at least one of the two years preceding the current year. The operating liquidity ratio is to include in the numerator unrestricted cash and cash equivalents and in the denominator the average quarterly operating expense for the four most recent quarters. FHFA believes that this operating liquidity ratio provides a measure of funds available to pay expenses and creditors by requiring a CDFI to have sufficient liquidity to cover average operating expenses for one quarter. FHFA requests comment on the appropriateness of the proposed requirement for operating liquidity.

Self-Sufficiency or Sustainability Ratio. The self-sufficiency or sustainability ratio is a measure used to evaluate the extent to which a CDFI can cover its expenses from earned revenue and, by inference, the CDFI's independence from grants and loans. The ratio is computed as earned revenue divided by total expenses. Full self-sufficiency is achieved when a CDFI achieves a ratio of 1.0 (100 percent) or greater. However, self-sufficiency ratios are affected by the type of services and grant programs operated by the CDFI. In some cases, the self-sufficiency ratio may not adequately portray the financial condition of the CDFI, and too stringent a ratio could countermand the service delivery requirements for certification by the CDFI Fund. *See* 12 U.S.C. 4701(b). The proposed rule does not include a requirement for the self-sufficiency ratio, but FHFA seeks comment on whether to include a standard for the self-sufficiency ratio as part of the minimum financial condition standards for CDFI members and, if so, what the threshold standard should be.[12]

CDFI Bank Holding Companies. FHFA understands that there are some bank holding companies that are certified as CDFIs, but it is not including that category of institution in the proposed rule. Any bank holding company would, by definition, control a federally insured commercial bank, which is eligible for Bank membership in its own right. Given that authority, FHFA believes that the appropriate vehicle for Bank membership for such enterprises is through the existing process for insured depository institutions. Nonetheless, FHFA requests comment on whether it should include in the final rule additional provisions relating to bank holding company membership based on CDFI status. To the extent that any commenters address this issue, FHFA also asks that they provide information about specific holding companies that operate as CDFIs, their relationships to their depository institution subsidiaries, and how membership via the CDFI

[12] By way of reference, between 2003 and 2005, the sustainability ratio for CDFI loan funds averaged around 65 percent; the median was 63 percent. Venture capital funds, which have a different business line, had a sustainability ratio of 68 percent. Credit unions principally dedicated to lending would be expected to consistently have ratios in excess of 100 percent. *See Approaches to CDFI Sustainability: Report prepared by the Aspen Institute Economic Opportunities Program, for the Department of the Treasury, Community Development Financial Institutions Fund,* July 2008.

provisions would provide benefits not available as a result of the depository institution becoming a member.

Character of Management. The current § 925.12 requires that an applicant's character of management be consistent with sound and economical home financing. To meet the existing requirement, an applicant must provide the Bank with a certification that it has not, since the applicant's most recent regulatory examination report, been subject to any enforcement actions, criminal, civil or administrative proceedings, or criminal, civil or administrative monetary liabilities, lawsuits or judgments.

The proposed rule would amend the existing provision by replacing the reference to ''applicant'' with a listing of the types of entities to which proposed § 1263.12(a) would apply. The list would include the institutions currently covered by this provision, *i.e.,* depository institutions and insurance companies, and also would add CDFI credit unions to that category. As noted previously, because state chartered credit unions that are insured by NCUA must comply with this provision, FHFA believes that those provisions should apply as well to state chartered credit unions that qualify as CDFI credit union applicants.

Because certain of the newly-eligible CDFIs, such as loan funds and venture capital funds, are not regulated and, therefore, do not undergo regulatory examinations and are not subject to enforcement actions, the proposed rule would amend proposed § 1263.12(b) to require such applicants to provide to the Bank the same certification, except for enforcement actions, with respect to the past three years. In light of the fact that these CDFIs are not subject to CAMELS-type ratings produced by the banking regulators, which evaluate an institution's management, FHFA requests comment on whether there are any other means by which a Bank can assess the character of a CDFI applicant's management.

Home Financing Policy. Under the current Membership Regulation, applicants with a ''Satisfactory'' or better Community Reinvestment Act (CRA) rating are deemed to meet the requirement that their home financing policy is consistent with sound and economical home financing. Section 1263.13(b) of the proposed rule would retain the existing requirement that applicants not subject to the CRA—such as CDFI applicants—must provide a written justification, acceptable to the Bank, explaining how and why their home financing policy is consistent with the Bank System's housing finance mission.

Rebuttable Presumptions. Section 925.17 of the Membership Regulation allows presumptions of compliance or noncompliance with certain membership eligibility requirements to be rebutted, upon meeting certain requirements set forth in that regulation. The proposed rule would amend the regulatory language to enable newly-eligible CDFI applicants to rebut presumptive noncompliance with such membership eligibility requirements, in the same manner as other applicants may do under the current regulations.

Accordingly, the proposed rule would extend the existing rebuttal provisions relating to presumptive noncompliance with the financial condition and character of management requirements to CDFI applicants. Such applicants could rebut those presumptions by submitting a written justification providing substantial evidence, acceptable to the Bank, demonstrating that their financial condition and character of management are both consistent with the standards for approval as members.

Proposed § 1263.17(e)(2) would provide that if a CDFI applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude in the past three years, the applicant must provide a written analysis indicating that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis must address the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

Proposed § 1263.17(e)(3) would provide that if there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the CDFI applicant or any of its directors or senior officers in the past three years that are significant to the applicant's operations, the applicant must provide a written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable net asset ratio set forth in proposed § 1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

F. Subpart D—Stock Purchase Requirements

The proposed rule would make various technical changes to the stock purchase requirements currently set forth in various provisions of Subpart D. At present, the minimum stock purchase requirements specified in § 925.20(a) are based on statutory provisions that cease to apply to a Bank once it has converted its capital structure to the form required by the Gramm-Leach-Bliley Act (GLB Act). Because all but one of the Banks has completed its capital conversion, proposed § 1263.20 is being amended to add language to indicate that the minimum stock purchase requirement for a member shall be the minimums specified in each Bank's capital structure plan. For members of the Bank that has not converted, the stock purchase requirement shall continue to be as specified in the Membership Regulation. The proposed rule also makes some conforming changes to proposed §§ 1263.21 and 1263.22, both of which relate to distinctions based on conversion to the GLB Act capital structure.

G. Other Subparts

The proposed rule makes no substantive changes in any of the remaining subparts of the Membership Regulation. In Subpart H, relating to the reacquisition of membership, the proposed rule would delete language from the current § 925.30(b) relating to institutions that withdrew from membership prior to December 31, 1997, as the passage of time has rendered that language moot.

H. Community Support Amendment—Part 944

Section 10(g)(1) of the Bank Act requires FHFA to establish standards of community investment or service for members of the Banks to maintain continued access to long-term Bank advances, taking into account factors such as a member's performance under the CRA and the member's record of lending to first-time homebuyers. *See* 12 U.S.C. 1430(g)(1), (2). The FHFB regulation setting forth such ''community support'' standards is at 12 CFR part 944. Under these provisions, a Bank member that is subject to the CRA is deemed to meet the CRA standard if its most recent CRA evaluation is ''outstanding'' or ''satisfactory.'' *See* 12 CFR 944.3(b)(1). A member also is presumed to meet the first-time homebuyer lending standard if its CRA evaluation is ''outstanding'' and there are no public comments or other

information to the contrary. 12 CFR 944.3(c). Members that are not subject to the CRA, such as credit unions and insurance companies, are only required to meet the first-time homebuyer lending standard. *Id.* Because the newly eligible CDFIs are not subject to the CRA, they would only be subject to the first-time homebuyer lending standard. Section 944.3(c)(1) includes a non-exclusive list of eligible activities that meet the first-time homebuyer lending standard, such as: having an established record of lending to first-time homebuyers; providing homeownership counseling programs for first-time homebuyers; providing or participating in marketing plans and related outreach programs targeted to first-time homebuyers; and providing technical assistance or financial support to organizations that assist first-time homebuyers. *See id.* at 944.3(c)(1).

FHFA believes that a CDFI should be able to comply with these requirements, even if it is not subject to the CRA and may have limited experience in lending to first-time homebuyers. Nonetheless, FHFA requests comments on whether it is appropriate to apply the current requirements to CDFIs or whether it would be appropriate to adopt an alternative community support standard for CDFIs that recognizes their unique mission and business practices while still complying with this statutory requirement.

I. Community Financial Institution Amendments

Apart from the amendments authorizing certified CDFIs to become Bank members, HERA included certain other amendments relating to ''community development activities.'' Section 1211 of HERA amended the Bank Act to broaden the circumstances under which ''community financial institutions'' (CFI), which are FDIC-insured members with average total assets of $1 billion or less, may obtain advances. Specifically, HERA allowed CFIs to obtain long-term advances for the purpose of funding ''community development activities'' and further allowed CFIs to pledge secured loans for ''community development activities'' as collateral for their advances. Because a CFI must be an institution with FDIC insurance, it does not appear that any of the newly eligible CDFIs, all of which would lack FDIC insurance, would be eligible to take advantage of these amendments to the advances and collateral provisions of the Bank Act. Nonetheless, the Finance Agency requests comments on whether there is any basis in the legislative history to HERA or otherwise on which it could reasonably rely to construe the new CFI provisions as applying to CDFIs as well as CFIs.

III. Paperwork Reduction Act

The information collection contained in the current Membership Regulation, entitled ''Members of the Banks,'' has been assigned control number 2590–0003 by the Office of Management and Budget (OMB). The proposed rule, if adopted as a final rule, would not substantively or materially modify the approved information collection. Consequently, FHFA has not submitted any information to OMB for review under the Paperwork Reduction Act of 1995. 44 U.S.C. 3501, *et seq.*

IV. Regulatory Flexibility Act

The proposed rule, if adopted as a final rule, will apply only to the Banks, which do not come within the meaning of ''small entities,'' as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the General Counsel of FHFA hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 12 CFR Parts 925 and 1263

Federal home loan banks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FHFA proposes to amend chapters IX and XII of title 12 of the Code of Federal Regulations as follows:

CHAPTER IX—FEDERAL HOUSING FINANCE BOARD

PART 925—MEMBERS OF THE BANKS

1. Transfer 12 CFR part 925 from chapter IX, subchapter D, to chapter XII, subchapter D and redesignate as 12 CFR part 1263.

2. Newly redesignated part 1263 is revised to read as follows:

PART 1263—MEMBERS OF THE BANKS

Subpart A—Definitions

Sec.
1263.1 Definitions.

Subpart B—Membership Application Process

1263.2 Membership application requirements.
1263.3 Decision on application.
1263.4 Automatic membership.
1263.5 Appeals.

Subpart C—Eligibility Requirements

1263.6 General eligibility requirements.
1263.7 Duly organized requirement.
1263.8 Subject to inspection and regulation requirement.
1263.9 Makes long-term home mortgage loans requirement.
1263.10 Ten percent requirement for certain insured depository institution applicants.
1263.11 Financial condition requirement for depository institutions and CDFI credit unions.
1263.12 Character of management requirement.
1263.13 Home financing policy requirement.
1263.14 De novo insured depository institution applicants.
1263.15 Recent merger or acquisition applicants.
1263.16 Financial condition requirement for insurance company and certain CDFI applicants.
1263.17 Rebuttable presumptions.
1263.18 Determination of appropriate Bank district for membership.

Subpart D—Stock Requirements

1263.19 Par value and price of stock.
1263.20 Stock purchase.
1263.21 Issuance and form of stock.
1263.22 Adjustments in stock holdings.
1263.23 Excess stock.

Subpart E—Consolidations Involving Members

1263.24 Consolidations involving members.

Subpart F—Withdrawal and Removal From Membership

1263.26 Voluntary withdrawal from membership.
1263.27 Involuntary termination of membership.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

1263.29 Disposition of claims.

Subpart H—Reacquisition of Membership

1263.30 Readmission to membership.

Subpart I—Bank Access to Information

1263.31 Reports and examinations.

Subpart J—Membership Insignia

1263.32 Official membership insignia.

Authority: 12 U.S.C. 1422, 1423, 1424, 1426, 1430, 1442, 4511, 4513.

Subpart A—Definitions

§ 1263.1 Definitions.

For purposes of this part:

Adjusted net income means net income, excluding extraordinary items such as income received from, or expense incurred in, sales of securities or fixed assets, reported on a regulatory financial report.

Aggregate unpaid loan principal means the aggregate unpaid principal of a subscriber's or member's home mortgage loans, home-purchase contracts and similar obligations.

Allowance for loan and lease losses means a specified balance-sheet account

held to fund potential losses on loans or leases, that is reported on a regulatory financial report.

Appropriate regulator means:

(1) In the case of an insured depository institution or CDFI credit union, the Federal Deposit Insurance Corporation, Board of Governors of the Federal Reserve System, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, or appropriate state regulator that has regulatory authority over, or is empowered to institute enforcement action against, the institution, as applicable, and

(2) In the case of an insurance company, an appropriate state regulator accredited by the National Association of Insurance Commissioners.

Bank Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

CDFI credit union means a state chartered credit union that has been certified as a CDFI by the CDFI Fund and that does not have federal share insurance.

CDFI Fund means the Community Development Financial Institutions Fund established under section 104(a) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*).

CFI asset cap means $1 billion, as adjusted annually by FHFA, beginning in 2009, to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor.

Class A stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(i) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(i)) and applicable FHFA regulations.

Class B stock means capital stock issued by a Bank, including subclasses, that has the characteristics specified in section 6(a)(4)(A)(ii) of the Bank Act (12 U.S.C. 1426(a)(4)(A)(ii)) and applicable FHFA regulations.

Combination business or farm property means real property for which the total appraised value is attributable to residential, and business or farm uses.

Community development financial institution or CDFI means an institution that is certified as a community development financial institution by the CDFI Fund under the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et seq.*), other than a bank or savings association insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*) or a credit union insured under the Federal Credit Union Act (12 U.S.C. 1751 *et seq.*).

Community financial institution or CFI means an institution:

(1) The deposits of which are insured under the Federal Deposit Insurance Act (12 U.S.C. 1811 *et seq.*); and

(2) The total assets of which, as of the date of a particular transaction, are less than the CFI asset cap, with total assets being calculated as an average of total assets over three years, with such average being based on the institution's regulatory financial reports filed with its appropriate regulator for the most recent calendar quarter and the immediately preceding 11 calendar quarters.

Composite regulatory examination rating means a composite rating assigned to an institution following the guidelines of the Uniform Financial Institutions Rating System (issued by the Federal Financial Institutions Examination Council), including a CAMELS rating or other similar rating, contained in a written regulatory examination report.

Consolidation includes a consolidation, a merger, or a purchase of all of the assets and assumption of all of the liabilities of an entity by another entity.

Director means the Director of FHFA or his or her designee.

Dwelling unit means a single room or a unified combination of rooms designed for residential use.

Enforcement action means any written notice, directive, order or agreement initiated by an applicant for Bank membership or by its appropriate regulator to address any operational, financial, managerial or other deficiencies of the applicant identified by such regulator, but does not include a board of directors resolution adopted by the applicant in response to examination weaknesses identified by such regulator.

Funded residential construction loan means the portion of a loan secured by real property made to finance the on-site construction of dwelling units on one-to-four family property or multifamily property disbursed to the borrower.

Gross revenues means, in the case of a CDFI applicant, total revenues received from all sources, including grants and other donor contributions and earnings from operations.

Home mortgage loan means:

(1) A loan, whether or not fully amortizing, or an interest in such a loan, which is secured by a mortgage, deed of trust, or other security agreement that creates a first lien on one of the following interests in property:

(i) One-to-four family property or multifamily property, in fee simple;

(ii) A leasehold on one-to-four family property or multifamily property under a lease of not less than 99 years that is renewable, or under a lease having a period of not less than 50 years to run from the date the mortgage was executed; or

(iii) Combination business or farm property where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of any community financial institution, combination business or farm property, on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property; or

(2) A mortgage pass-through security that represents an undivided ownership interest in:

(i) Long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition; or

(ii) A security that represents an undivided ownership interest in long-term loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraph (1) of this definition.

Insured depository institution means an insured depository institution as defined in section 2(9) of the Bank Act, as amended (12 U.S.C. 1422(9)).

Long-term means a term to maturity of five years or greater.

Manufactured housing means a manufactured home as defined in section 603(6) of the Manufactured Home Construction and Safety Standards Act of 1974, as amended (42 U.S.C. 5402(6)).

Multifamily property means:

(1) Real property that is solely residential and includes five or more dwelling units;

(2) Real property that includes five or more dwelling units combined with commercial units, provided that the property is primarily residential; or

(3) Nursing homes, dormitories, or homes for the elderly.

Nonperforming loans and leases means the sum of the following, reported on a regulatory financial report:

(1) Loans and leases that have been past due for 90 days (60 days in the case of credit union applicants) or longer but are still accruing;

(2) Loans and leases on a nonaccrual basis; and

(3) Restructured loans and leases (not already reported as nonperforming).

Nonresidential real property means real property that is not used for

residential purposes, including business or industrial property, hotels, motels, churches, hospitals, educational and charitable institution buildings or facilities, clubs, lodges, association buildings, golf courses, recreational facilities, farm property not containing a dwelling unit, or similar types of property.

One-to-four family property means:

(1) Real property that is solely residential, including one-to-four family dwelling units or more than four family dwelling units if each dwelling unit is separated from the other dwelling units by dividing walls that extend from ground to roof, such as row houses, townhouses or similar types of property;

(2) Manufactured housing if applicable state law defines the purchase or holding of manufactured housing as the purchase or holding of real property;

(3) Individual condominium dwelling units or interests in individual cooperative housing dwelling units that are part of a condominium or cooperative building without regard to the number of total dwelling units therein; or

(4) Real property which includes one-to-four family dwelling units combined with commercial units, provided the property is primarily residential.

Operating expenses means, in the case of a CDFI applicant, expenses for business operations, including, but not limited to, staff salaries and benefits, professional fees, interest, loan loss provision, and depreciation, contained in the applicant's audited financial statements.

Other real estate owned means all other real estate owned (*i.e.,* foreclosed and repossessed real estate), reported on a regulatory financial report, and does not include direct and indirect investments in real estate ventures.

Regulatory examination report means a written report of examination prepared by the applicant's appropriate regulator, containing, in the case of insured depository institution applicants, a composite rating assigned to the institution following the guidelines of the Uniform Financial Institutions Rating System, including a CAMELS rating or other similar rating.

Regulatory financial report means a financial report that an applicant is required to file with its appropriate regulator on a specific periodic basis, including the quarterly call report for commercial banks, thrift financial report for savings associations, quarterly or semi-annual call report for credit unions, the National Association of Insurance Commissioners' annual or quarterly report for insurance companies, or other similar report, including such report maintained by the appropriate regulator on a computer on-line database.

Residential mortgage loan means any one of the following types of loans, whether or not fully amortizing:

(1) Home mortgage loans;

(2) Funded residential construction loans;

(3) Loans secured by manufactured housing whether or not defined by state law as secured by an interest in real property;

(4) Loans secured by junior liens on one-to-four family property or multifamily property;

(5) Mortgage pass-through securities representing an undivided ownership interest in:

(i) Loans that meet the requirements of paragraphs (1) through (4) of this definition at the time of issuance of the security;

(ii) Securities representing an undivided ownership interest in loans, provided that, at the time of issuance of the security, all of the loans meet the requirements of paragraphs (1) through (4) of this definition; or

(iii) Mortgage debt securities as defined in paragraph (6) of this definition;

(6) Mortgage debt securities secured by:

(i) Loans, provided that, at the time of issuance of the security, substantially all of the loans meet the requirements of paragraphs (1) through (4) of this definition;

(ii) Securities that meet the requirements of paragraph (5) of this definition; or

(iii) Securities secured by assets, provided that, at the time of issuance of the security, all of the assets meet the requirements of paragraphs (1) through (5) of this definition;

(7) Home mortgage loans secured by a leasehold interest, as defined in paragraph (1)(ii) of the definition of ''home mortgage loan,'' except that the period of the lease term may be for any duration; or

(8) Loans that finance properties or activities that, if made by a member, would satisfy the statutory requirements for the CIP established under section 10(i) of the Bank Act (12 U.S.C. 1430(i)), or the regulatory requirements established for any CICA program.

Restricted assets means both permanently restricted assets and temporarily restricted assets, as those terms are used in Financial Accounting Standard No. 117, or any successor publication.

Total assets means the total assets reported on a regulatory financial report or, in the case of a CDFI applicant, the total assets contained in the applicant's audited financial statements.

Unrestricted cash and cash equivalents means, in the case of a CDFI applicant, cash and highly liquid assets that can be easily converted into cash that are not restricted in a manner that prevents their use in paying expenses, as contained in the applicant's audited financial statements.

Subpart B—Membership Application Process

§ 1263.2 Membership application requirements.

(a) *Application.* An applicant for membership in a Bank shall submit to that Bank an application that satisfies the requirements of this part. The application shall include a written resolution or certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, of the following:

(1) *Applicant review.* Applicant has reviewed the requirements of this part and, as required by this part, has provided to the best of applicant's knowledge the most recent, accurate and complete information available; and

(2) *Duty to supplement.* Applicant will promptly supplement the application with any relevant information that comes to applicant's attention prior to the Bank's decision on whether to approve or deny the application, and if the Bank's decision is appealed pursuant to § 1263.5, prior to resolution of any appeal by FHFA.

(b) *Digest.* The Bank shall prepare a written digest for each applicant stating whether or not the applicant meets each of the requirements in §§ 1263.6 to 1263.18, the Bank's findings and the reasons therefor.

(c) *File.* The Bank shall maintain a membership file for each applicant for at least three years after the Bank decides whether to approve or deny membership or, in the case of an appeal to FHFA, for three years after the resolution of the appeal. The membership file shall contain at a minimum:

(1) *Digest.* The digest required by paragraph (b) of this section.

(2) *Required documents.* All documents required by §§ 1263.6 to 1263.18, including those documents required to establish or rebut a presumption under this part, shall be described in and attached to the digest. The Bank may retain in the file only the relevant portions of the regulatory financial reports required by this part. If an applicant's appropriate regulator

requires return or destruction of a regulatory examination report, the date that the report is returned or destroyed shall be noted in the file.

(3) *Additional documents.* Any additional document submitted by the applicant, or otherwise obtained or generated by the Bank, concerning the applicant.

(4) *Decision resolution.* The decision resolution described in § 1263.3(b).

§ 1263.3 Decision on application.

(a) *Authority.* FHFA hereby authorizes the Banks to approve or deny all applications for membership, subject to the requirements of this part. The authority to approve membership applications may be exercised only by a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president, other than an officer with responsibility for business development.

(b) *Decision resolution.* For each applicant, the Bank shall prepare a written resolution duly adopted by the Bank's board of directors, by a committee of the board of directors, or by an officer with delegated authority to approve membership applications. The decision resolution shall state:

(1) That the statements in the digest are accurate to the best of the Bank's knowledge, and are based on a diligent and comprehensive review of all available information identified in the digest; and

(2) The Bank's decision and the reasons therefor. Decisions to approve an application should state specifically that: the applicant is authorized under the laws of the United States and the laws of the appropriate state to become a member of, purchase stock in, do business with, and maintain deposits in, the Bank to which the applicant has applied; and the applicant meets all of the membership eligibility criteria of the Bank Act and this part.

(c) *Action on applications.* The Bank shall act on an application within 60 calendar days of the date the Bank deems the application to be complete. An application is ''complete'' when a Bank has obtained all the information required by this part, and any other information the Bank deems necessary, to process the application. If an application that was deemed complete subsequently is deemed incomplete because the Bank determines during the review process that additional information is necessary to process the application, the Bank may stop the 60-day clock until the application again is deemed complete, and then resume the clock where it left off. The Bank shall notify an applicant in writing when its application is deemed by the Bank to be complete, and shall maintain a copy of such letter in the applicant's membership file. The Bank shall notify an applicant if the 60-day clock is stopped, and when the clock is resumed, and shall maintain a written record of such notifications in the applicant's membership file. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and FHFA with a copy of the Bank's decision resolution.

§ 1263.4 Automatic membership.

(a) *Automatic membership for certain charter conversions.* An insured depository institution member that converts from one charter type to another automatically shall become a member of the Bank of which the converting institution was a member on the effective date of such conversion, provided that the converting institution continues to be an insured depository institution and the assets of the institution immediately before and immediately after the conversion are not materially different. In such case, all relationships existing between the member and the Bank at the time of such conversion may continue.

(b) *Automatic membership for transfers.* Any member whose membership is transferred pursuant to § 1263.18(d) automatically shall become a member of the Bank to which it transfers.

(c) *Automatic membership, in the Bank's discretion, for certain consolidations.* (1) If a member institution (or institutions) and a nonmember institution are consolidated and the consolidated institution has its principal place of business in a state in the same Bank district as the disappearing institution (or institutions), and the consolidated institution will operate under the charter of the nonmember institution, on the effective date of the consolidation, the consolidated institution may, in the discretion of the Bank of which the disappearing institution (or institutions) was a member immediately prior to the effective date of the consolidation, automatically become a member of such Bank upon the purchase of the minimum amount of Bank stock required for membership in that Bank as required by § 1263.20, provided that:

(i) 90 percent or more of the total assets of the consolidated institution are derived from the total assets of the disappearing member institution (or institutions); and

(ii) The consolidated institution provides written notice to such Bank, within 60 calendar days after the effective date of the consolidation, that it desires to be a member of the Bank.

(2) The provisions of § 1263.24(b)(4)(i) shall apply, and upon approval of automatic membership by the Bank, the provisions of § 1263.24(c) and (d) shall apply.

§ 1263.5 Appeals.

(a) *Appeals by applicants*—(1) *Filing procedure.* Within 90 calendar days of the date of a Bank's decision to deny an application for membership, the applicant may file a written appeal of the decision with FHFA.

(2) *Documents.* The applicant's appeal shall be addressed to the Deputy Director for Federal Home Loan Bank Regulation, Federal Housing Finance Agency, 1625 Eye Street, NW., Washington, DC 20006, with a copy to the Bank, and shall include the following documents:

(i) *Bank's decision resolution.* A copy of the Bank's decision resolution; and

(ii) *Basis for appeal.* A statement of the basis for the appeal by the applicant with sufficient facts, information, analysis and explanation to rebut any applicable presumptions and otherwise support the applicant's position.

(b) *Record for appeal*—(1) *Copy of membership file.* Upon receiving a copy of an appeal, the Bank whose action has been appealed (appellee Bank) shall provide FHFA with a copy of the applicant's complete membership file. Until FHFA resolves the appeal, the appellee Bank shall supplement the materials provided to FHFA as any new materials are received.

(2) *Additional information.* FHFA may request additional information or further supporting arguments from the appellant, the appellee Bank or any other party that FHFA deems appropriate.

(c) *Deciding appeals.* FHFA shall consider the record for appeal described in paragraph (b) of this section and shall resolve the appeal based on the requirements of the Bank Act and this part within 90 calendar days of the date the appeal is filed with FHFA. In deciding the appeal, FHFA shall apply the presumptions in this part, unless the appellant or appellee Bank presents evidence to rebut a presumption as provided in § 1263.17.

Subpart C—Eligibility Requirements

§ 1263.6 General eligibility requirements.

(a) *Requirements.* Any building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, community

development financial institution, or insured depository institution, upon application satisfying all of the requirements of the Bank Act and this part, shall be eligible to become a member of a Bank if:

(1) It is duly organized under the laws of any State or of the United States;

(2) It is subject to inspection and regulation under the banking laws, or under similar laws, of any State or of the United States;

(3) It makes long-term home mortgage loans;

(4) Its financial condition is such that advances may be safely made to it;

(5) The character of its management is consistent with sound and economical home financing; and

(6) Its home financing policy is consistent with sound and economical home financing.

(b) *Additional eligibility requirement for insured depository institutions other than community financial institutions.* In order to be eligible to become a member of a Bank, an insured depository institution applicant other than a community financial institution also must have at least 10 percent of its total assets in residential mortgage loans.

(c) *Additional eligibility requirement for applicants that are not insured depository institutions.* In order to be eligible to become a member of a Bank, an applicant that is not an insured depository institution also must have mortgage-related assets that reflect a commitment to housing finance, as determined by the Bank in its discretion.

(d) *Ineligibility.* Except as otherwise provided in this part, if an applicant does not satisfy the requirements of this part, the applicant is ineligible for membership.

§ 1263.7 Duly organized requirement.

An applicant shall be deemed to be duly organized, as required by section 4(a)(1)(A) of the Bank Act (12 U.S.C. 1424(a)(1)(A)) and § 1263.6(a)(1) of this part, if it is chartered by a state or federal agency as a building and loan association, savings and loan association, cooperative bank, homestead association, insurance company, savings bank, or insured depository institution, or in the case of a CDFI applicant, is incorporated under state law.

§ 1263.8 Subject to inspection and regulation requirement.

An applicant shall be deemed to be subject to inspection and regulation, as required by section 4(a)(1)(B) of the Bank Act (12 U.S.C. 1424 (a)(1)(B)) and § 1263.6(a)(2) of this part, if, in the case of an insured depository institution or insurance company applicant, it is subject to inspection and regulation by its appropriate regulator.

§ 1263.9 Makes long-term home mortgage loans requirement.

An applicant shall be deemed to make long-term home mortgage loans, as required by section 4(a)(1)(C) of the Bank Act (12 U.S.C. 1424(a)(1)(C)) and § 1263.6(a)(3) of this part if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, or other documentation provided to the Bank in the case of a CDFI applicant that does not file such reports, the applicant originates or purchases long-term home mortgage loans.

§ 1263.10 Ten percent requirement for certain insured depository institution applicants.

An insured depository institution applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part shall be deemed to be in compliance with such requirement if, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant has at least 10 percent of its total assets in residential mortgage loans, except that any assets used to secure mortgage debt securities as described in paragraph (6) of the definition of ''residential mortgage loan'' set forth in § 1263.1 shall not be used to meet this requirement.

§ 1263.11 Financial condition requirement for depository institutions and CDFI credit unions.

(a) *Review requirement.* In determining whether a building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, or CDFI credit union has complied with the financial condition requirement of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4) of this part, the Bank shall obtain as a part of the membership application and review each of the following documents:

(1) *Regulatory financial reports.* The regulatory financial reports filed by the applicant with its appropriate regulator for the last six calendar quarters and three year-ends preceding the date the Bank receives the application;

(2) *Financial statement.* In order of preference: the most recent independent audit of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the applicant; the most recent independent audit of the applicant's parent holding company conducted in accordance with generally accepted auditing standards by a certified public accounting firm which submits a report on the consolidated holding company but not on the applicant separately; the most recent directors' examination of the applicant conducted in accordance with generally accepted auditing standards by a certified public accounting firm; the most recent directors' examination of the applicant performed by other external auditors; the most recent review of the applicant's financial statements by external auditors; the most recent compilation of the applicant's financial statements by external auditors; or the most recent audit of other procedures of the applicant;

(3) *Regulatory examination report.* The applicant's most recent available regulatory examination report prepared by its appropriate regulator, a summary prepared by the Bank of the applicant's strengths and weaknesses as cited in the regulatory examination report, and a summary prepared by the Bank or applicant of actions taken by the applicant to respond to examination weaknesses;

(4) *Enforcement actions.* A description prepared by the Bank or applicant of any outstanding enforcement actions against the applicant, responses by the applicant, reports as required by the enforcement action, and verbal or written indications, if available, from the appropriate regulator of how the applicant is complying with the terms of the enforcement action; and

(5) *Additional information.* Any other relevant document or information concerning the applicant that comes to the Bank's attention in reviewing the applicant's financial condition.

(b) *Standards.* An applicant of the type described in paragraph (a) of this section shall be deemed to be in compliance with the financial condition requirement of section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4) of this part, if:

(1) *Recent composite regulatory examination rating.* The applicant has received a composite regulatory examination rating from its appropriate regulator within two years preceding the date the Bank receives the application;

(2) *Capital requirement.* The applicant meets all of its minimum statutory and regulatory capital requirements as reported in its most recent quarter-end

regulatory financial report filed with its appropriate regulator; and

(3) *Minimum performance standard.* (i) Except as provided in paragraph (b)(3)(iii) of this section, the applicant's most recent composite regulatory examination rating from its appropriate regulator within the past two years was ''1;'' or was ''2'' or ''3'' and, based on the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant satisfied all of the following performance trend criteria:

(A) *Earnings.* The applicant's adjusted net income was positive in four of the six most recent calendar quarters;

(B) *Nonperforming assets.* The applicant's nonperforming loans and leases plus other real estate owned, did not exceed 10 percent of its total loans and leases plus other real estate owned, in the most recent calendar quarter; and

(C) *Allowance for loan and lease losses.* The applicant's ratio of its allowance for loan and lease losses plus the allocated transfer risk reserve to nonperforming loans and leases was 60 percent or greater during four of the six most recent calendar quarters.

(ii) For applicants that are not required to report financial data to their appropriate regulator on a quarterly basis, the information required in paragraph (b)(3)(i) of this section may be reported on a semiannual basis.

(iii) a CDFI credit union applicant must meet the performance trend criteria in paragraph (b)(3)(i) of this section irrespective of its composite regulatory examination rating.

(c) *Eligible collateral not considered.* The availability of sufficient eligible collateral to secure advances to the applicant is presumed and shall not be considered in determining whether an applicant is in the financial condition required by section 4(a)(2)(B) of the Bank Act (12 U.S.C. 1424(a)(2)(B)) and § 1263.6(a)(4) of this part.

§ 1263.12 Character of management requirement.

(a) *General.* A building and loan association, savings and loan association, cooperative bank, homestead association, savings bank, insured depository institution, insurance company, and CDFI credit union shall be deemed to be in compliance with the character of management requirement of § 1263.6(a)(5), if the applicant provides to the Bank an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) *Enforcement actions.* Neither the applicant nor any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator;

(2) *Criminal, civil or administrative proceedings.* Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report; and

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, that are significant to the applicant's operations.

(b) *CDFIs other than CDFI credit unions.* A CDFI applicant other than a CDFI credit union shall be deemed to be in compliance with the character of management requirement of § 1263.6(a)(5), if the applicant provides an unqualified written certification duly adopted by the applicant's board of directors, or by an individual with authority to act on behalf of the applicant's board of directors, that:

(1) Neither the applicant nor any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude in the past three years; and

(2) There are no known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers arising within the past three years that are significant to the applicant's operations.

§ 1263.13 Home financing policy requirement.

(a) *Standard.* An applicant shall be deemed to be in compliance with the home financing policy requirement of § 1263.6(a)(6) if the applicant has received a Community Reinvestment Act (CRA) rating of ''Satisfactory'' or better on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(b) *Written justification required.* An applicant that is not subject to the CRA shall file as part of its application for membership a written justification acceptable to the Bank of how and why the applicant's home financing policy is consistent with the Bank System's housing finance mission.

§ 1263.14 De novo insured depository institution applicants.

(a) *Duly organized, subject to inspection and regulation, financial condition and character of management requirements.* An insured depository institution applicant whose date of charter approval is within three years prior to the date the Bank receives the applicant's application for membership in the Bank (de novo applicant) is deemed to meet the requirements of §§ 1263.7, 1263.8, 1263.11 and 1263.12.

(b) *Makes long-term home mortgage loans requirement.* A de novo applicant shall be deemed to make long-term home mortgage loans as required by § 1263.9 if it has filed as part of its application for membership a written justification acceptable to the Bank of how its home financing credit policy and lending practices will include originating or purchasing long-term home mortgage loans.

(c) *10 percent requirement*—(1) *One-year requirement.* A de novo applicant that is subject to the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part shall have until one year after commencing its initial business operations to meet the 10 percent requirement of § 1263.10.

(2) *Conditional approval.* A de novo applicant shall be conditionally deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part. A de novo applicant that receives such conditional membership approval is subject to the stock purchase requirements established by FHFA regulation or the Bank's capital plan, as applicable, as well as the FHFA regulations governing advances to members.

(3) *Approval.* A de novo applicant shall be deemed to be in compliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this part upon receipt by the Bank from the applicant, within one year after commencement of the applicant's initial business operations, of evidence acceptable to the Bank that the applicant satisfies the 10 percent requirement.

(4) *Conditional approval deemed null and void.* If the requirements of paragraph (c)(3) of this section are not satisfied, a de novo applicant shall be deemed to be in noncompliance with the 10 percent requirement of section 4(a)(2)(A) of the Bank Act (12 U.S.C. 1424(a)(2)(A)) and § 1263.6(b) of this

part, and its conditional membership approval is deemed null and void.

(5) *Treatment of outstanding advances and Bank stock.* If a de novo applicant's conditional membership approval is deemed null and void pursuant to paragraph (c)(4) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 1263.29.

(d) *Home financing policy requirement*—(1) *Conditional approval.* A de novo applicant that has not received its first formal, or, if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, shall be conditionally deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) of this part, if the applicant has filed as part of its application for membership a written justification acceptable to the Bank of how and why its home financing credit policy and lending practices will meet the credit needs of its community. An applicant that receives such conditional membership approval is subject to the stock purchase requirements established by FHFA regulation or the Bank's capital plan, as applicable, as well as the FHFA regulations governing advances to members.

(2) *Approval.* A de novo applicant that has been granted conditional approval under paragraph (d)(1) of this section shall be deemed to be in compliance with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) of this part upon receipt by the Bank of evidence from the applicant that it received a CRA rating of ''Satisfactory'' or better on its first formal, or if unavailable, informal or preliminary, CRA performance evaluation.

(3) *Conditional approval deemed null and void.* If the de novo applicant's first such CRA rating is ''Needs to Improve'' or ''Substantial Non-Compliance,'' the applicant shall be deemed to be in noncompliance with the home financing policy requirement of section 4(a)(2)(C) of the Bank Act (12 U.S.C. 1424(a)(2)(C)) and § 1263.6(a)(6) of this part, subject to rebuttal by the applicant under § 1263.17(f), and its conditional membership approval is deemed null and void.

(4) *Treatment of outstanding advances and Bank stock.* If the applicant's conditional membership approval is deemed null and void pursuant to paragraph (d)(3) of this section, the liquidation of any outstanding indebtedness owed by the applicant to the Bank and redemption of stock of such Bank shall be carried out in accordance with § 1263.29.

§ 1263.15 Recent merger or acquisition applicants.

An applicant that merged with or acquired another institution prior to the date the Bank receives its application for membership is subject to the requirements of §§ 1263.7 to 1263.13 except as provided in this section.

(a) *Financial condition requirement*—(1) *Regulatory financial reports.* For purposes of § 1263.11(a)(1), an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed regulatory financial reports with its appropriate regulator for the last six calendar quarters and three year-ends preceding such date, shall provide any regulatory financial reports that the applicant has filed with its appropriate regulator.

(2) *Performance trend criteria.* For purposes of § 1263.11(b)(3)(i)(A) to (C), an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed combined regulatory financial reports with its appropriate regulator for the last six calendar quarters preceding such date, shall provide pro forma combined financial statements for those calendar quarters in which actual combined regulatory financial reports are unavailable.

(b) *Home financing policy requirement.* For purposes of § 1263.13, an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not received its first formal, or if unavailable, informal or preliminary, Community Reinvestment Act performance evaluation, shall file as part of its application a written justification acceptable to the Bank of how and why the applicant's home financing credit policy and lending practices will meet the credit needs of its community.

(c) *Makes long-term home mortgage loans requirement; 10 percent requirement.* For purposes of determining compliance with §§ 1263.9 and 1263.10, a Bank may, in its discretion, permit an applicant that, as a result of a merger or acquisition preceding the date the Bank receives its application for membership, has not yet filed a consolidated regulatory financial report as a combined entity with its appropriate regulator, to provide the combined pro forma financial statement for the combined entity filed with the regulator that approved the merger or acquisition.

§ 1263.16 Financial condition requirement for insurance company and certain CDFI applicants.

(a) *Insurance companies.* An insurance company applicant shall be deemed to meet the financial condition requirement of § 1263.6(a)(4) if, based on the information contained in the applicant's most recent regulatory financial report filed with its appropriate regulator, the applicant meets all of its minimum statutory and regulatory capital requirements and the capital standards established by the National Association of Insurance Commissioners.

(b) *CDFIs other than CDFI credit unions*—(1) *Review requirement.* In determining whether a CDFI applicant, other than a CDFI credit union, has complied with the financial condition requirement of § 1263.6(a)(4), the Bank shall obtain as a part of the membership application and review each of the following documents:

(i) *Financial statements.* An independent audit conducted within the prior year in accordance with generally accepted auditing standards by a certified public accounting firm, plus more recent quarterly statements, if available, and financial statements for the two years prior to the most recent audited financial statement. At a minimum, all such financial statements must include income and expense statements, statements of activities, statements of financial position, and statements of cash flows. The financial statement for the most recent year must include separate schedules or disclosures of the financial position of each of the applicant's affiliates, descriptions of their lines of business, detailed financial disclosures of the relationship between the applicant and its affiliates (such as indebtedness or subordinate debt obligations), disclosures of interlocking directorships with each affiliate, and identification of temporary and permanently restricted funds and the requirements of these restrictions.

(ii) *CDFI Fund certification.* The certification that the applicant has received from the CDFI Fund. If the certification is more than three years old, the applicant must also submit a written statement certifying that there have been no material events or occurrences since the date of certification that would adversely affect its strategic direction, mission, or business operations.

(iii) *Additional information.* Any other relevant document or information concerning the financial condition of the applicant requested by the Bank and that is not contained in the applicant's financial statements.

(2) *Standards.* A CDFI applicant, other than a CDFI credit union, shall be deemed to be in compliance with the financial condition requirement of § 1263.6(a)(4) if it meets all of the following minimum financial standards:

(i) *Net asset ratio.* The applicant's ratio of net assets to total assets is at least 20 percent, with net and total assets including restricted assets, where net assets is calculated as the residual value of assets over liabilities and is based on information derived from the applicant's most recent financial statements;

(ii) *Earnings.* The applicant has shown a positive net income for two of the three most recent years, where net income is calculated as gross revenues less total expenses and is based on information derived from the applicant's most recent financial statements;

(iii) *Loan loss reserves.* The applicant's ratio of loan loss reserves to loans and leases 90 days or more delinquent (including loans sold with full recourse) is at least 30 percent, where loan loss reserves are a specified balance sheet account that reflects the amount reserved for loans expected to be uncollectible and are based on information derived from the applicant's most recent financial statements;

(iv) *Liquidity.* The applicant has an operating liquidity ratio of at least 1.0 for the current year, and for one or both of the two preceding years, where the numerator of the ratio includes unrestricted cash and cash equivalents and the denominator of the ratio is the average quarterly operating expense for the four most recent quarters.

§ 1263.17 Rebuttable presumptions.

(a) *Rebutting presumptive compliance.* The presumption that an applicant meeting the requirements of §§ 1263.7 to 1263.16 is in compliance with section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a) and (b) of this part, may be rebutted, and the Bank may deny membership to the applicant, if the Bank obtains substantial evidence to overcome the presumption of compliance.

(b) *Rebutting presumptive noncompliance.* The presumption that an applicant not meeting a particular requirement of §§ 1263.8, 1263.11, 1263.12, 1263.13, or 1263.16 is in noncompliance with section 4(a) of the Bank Act (12 U.S.C. 1424(a)) and § 1263.6(a)(2), (4), (5), or (6) of this part, may be rebutted, and the applicant shall be deemed to meet such requirement, if the applicable requirements in this section are satisfied.

(c) *Presumptive noncompliance by insurance company applicant with ''subject to inspection and regulation'' requirement of § 1263.8.* If an insurance company applicant is not subject to inspection and regulation by an appropriate state regulator accredited by the National Association of Insurance Commissioners (NAIC), as required by § 1263.8, the applicant or the Bank shall prepare a written justification that provides substantial evidence acceptable to the Bank that the applicant is subject to inspection and regulation as required by § 1263.6(a)(2), notwithstanding the lack of NAIC accreditation.

(d) *Presumptive noncompliance with financial condition requirements of §§ 1263.11 and 1263.16*—(1) *Applicants subject to § 1263.11.* For applicants subject to § 1263.11, in the case of an applicant's lack of a composite regulatory examination rating within the two-year period required by § 1263.11(b)(1), a variance from the rating required by § 1263.11(b)(3)(i), or a variance from a performance trend criterion required by § 1263.11(b)(3)(i), the applicant or the Bank shall prepare a written justification pertaining to such requirement that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the lack of rating or variance.

(2) *Applicants subject to § 1263.16.* For applicants subject to § 1263.16, in the case of an insurance company applicant's variance from a capital requirement or standard of § 1263.16(a) or in the case of a CDFI applicant's variance from the standards of § 1263.16(b), the applicant or the Bank shall prepare a written justification pertaining to such requirement or standard that provides substantial evidence acceptable to the Bank that the applicant is in the financial condition required by § 1263.6(a)(4), notwithstanding the variance.

(e) *Presumptive noncompliance with character of management requirement of § 1263.12*—(1) *Enforcement actions.* If an applicant or any of its directors or senior officers is subject to, or operating under, any enforcement action instituted by its appropriate regulator, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the applicant or its directors or senior officers are in substantial compliance with all aspects of the enforcement action. The written analysis shall state each action the applicant or its directors or senior officers are required to take by the enforcement action, the actions actually taken by the applicant or its directors or senior officers, and whether the applicant regards this as substantial compliance with all aspects of the enforcement action.

(2) *Criminal, civil or administrative proceedings.* If an applicant or any of its directors or senior officers has been the subject of any criminal, civil or administrative proceedings reflecting upon creditworthiness, business judgment, or moral turpitude since the most recent regulatory examination report, or in the case of a CDFI applicant, during the past three years, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the proceedings will not likely result in enforcement action; or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the proceedings will not likely result in enforcement action, or in the case of a CDFI applicant, that the proceedings will not likely have a significantly deleterious effect on the applicant's operations. The written analysis shall state the severity of the charges, and any mitigating action taken by the applicant or its directors or senior officers.

(3) *Criminal, civil or administrative monetary liabilities, lawsuits or judgments.* If there are any known potential criminal, civil or administrative monetary liabilities, material pending lawsuits, or unsatisfied judgments against the applicant or any of its directors or senior officers since the most recent regulatory examination report, or in the case of a CDFI applicant, occurring within the past three years, that are significant to the applicant's operations, the applicant shall provide or the Bank shall obtain:

(i) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its

applicable capital requirements set forth in §§ 1263.11(b)(2) and 1263.16(a); or

(ii) *Written analysis.* A written analysis acceptable to the Bank indicating that the liabilities, lawsuits or judgments will not likely cause the applicant to fall below its applicable capital requirements set forth in § 1263.11(b)(2) or § 1263.16(a), or the net asset ratio set forth in § 1263.16(b)(2)(i). The written analysis shall state the likelihood of the applicant or its directors or senior officers prevailing, and the financial consequences if the applicant or its directors or senior officers do not prevail.

(f) *Presumptive noncompliance with home financing policy requirements of §§ 1263.13 and 1263.14(d).* If an applicant received a ''Substantial Non-Compliance'' rating on its most recent formal, or if unavailable, informal or preliminary, Community Reinvestment Act (CRA) performance evaluation, or a ''Needs to Improve'' CRA rating on its most recent formal, or if unavailable, informal or preliminary, CRA performance evaluation and a CRA rating of ''Needs to Improve'' or better on any immediately preceding CRA performance evaluation, the applicant shall provide or the Bank shall obtain:

(1) *Regulator confirmation.* Written or verbal confirmation from the applicant's appropriate regulator of the applicant's recent satisfactory CRA performance, including any corrective action that substantially improved upon the deficiencies cited in the most recent CRA performance evaluation(s); or

(2) *Written analysis.* A written analysis acceptable to the Bank demonstrating that the CRA rating is unrelated to home financing, and providing substantial evidence of how and why the applicant's home financing credit policy and lending practices meet the credit needs of its community.

§ 1263.18 Determination of appropriate Bank district for membership.

(a) *Eligibility.* (1) An institution eligible to become a member of a Bank under the Bank Act and this part may become a member only of the Bank of the district in which the institution's principal place of business is located, except as provided in paragraph (a)(2) of this section. A member shall promptly notify its Bank in writing whenever it relocates its principal place of business to another state and the Bank shall inform FHFA in writing of any such relocation.

(2) An institution eligible to become a member of a Bank under the Bank Act and this part may become a member of the Bank of a district adjoining the district in which the institution's principal place of business is located, if demanded by convenience and then only with the approval of FHFA.

(b) *Principal place of business.* Except as otherwise designated in accordance with this section, the principal place of business of an institution is the state in which the institution maintains its home office established as such in conformity with the laws under which the institution is organized.

(c) *Designation of principal place of business.* (1) A member or an applicant for membership may request in writing to the Bank in the district where the institution maintains its home office that a state other than the state in which it maintains its home office be designated as its principal place of business. Within 90 calendar days of receipt of such written request, the board of directors of the Bank in the district where the institution maintains its home office shall designate a state other than the state where the institution maintains its home office as the institution's principal place of business, provided all of the following criteria are satisfied:

(i) At least 80 percent of the institution's accounting books, records and ledgers are maintained, located or held in such designated state;

(ii) A majority of meetings of the institution's board of directors and constituent committees are conducted in such designated state; and

(iii) A majority of the institution's five highest paid officers have their place of employment located in such designated state.

(2) Written notice of a designation made pursuant to paragraph (c)(1) of this section shall be sent to the Bank in the district containing the designated state, FHFA and the institution.

(3) The notice of designation made pursuant to paragraph (c)(1) of this section shall include the state designated as the principal place of business and the resulting Bank to which membership will be transferred.

(4) If the board of directors of the Bank in the district where the institution maintains its home office fails to make the designation requested by the member or applicant pursuant to paragraph (c)(1) of this section, then the member or applicant may request in writing that FHFA make the designation.

(d) *Transfer of membership.* (1) No transfer of membership from one Bank to another Bank shall take effect until the Banks involved reach agreement on a method of orderly transfer.

(2) In the event that the Banks involved fail to agree on a method of orderly transfer, the FHFA shall determine the conditions under which the transfer shall take place.

(e) *Effect of transfer.* A transfer of membership pursuant to this section shall be effective for all purposes, but shall not affect voting rights in the year of the transfer and shall not be subject to the provisions on termination of membership set forth in section 6 of the Bank Act (12 U.S.C. 1426) or §§ 1263.26 and 1263.27, nor the restriction on reacquiring Bank membership set forth in § 1263.30.

Subpart D—Stock Requirements

§ 1263.19 Par value and price of stock.

The capital stock of each Bank shall be sold at par, unless the Director has fixed a higher price.

§ 1263.20 Stock purchase.

(a) *Minimum stock purchase.* Each member shall purchase stock in the Bank of which it is a member in an amount specified by the Bank's capital plan, except that each member of a Bank that has not converted to the capital structure authorized by the GLB Act shall purchase stock in the Bank in an amount equal to the greater of:

(1) $500;

(2) 1 percent of the member's aggregate unpaid loan principal; or

(3) 5 percent of the member's aggregate amount of outstanding advances.

(b) *Timing of minimum stock purchase.* (1) Within 60 calendar days after an institution is approved for membership in a Bank, the institution shall purchase its minimum stock requirement as set forth in paragraph (a) of this section.

(2) In the case of a Bank that has not converted to the capital structure authorized by the GLB Act, an institution that has been approved for membership may elect to purchase its minimum stock requirement in installments, provided that not less than one-fourth of the total amount shall be purchased within 60 calendar days of the date of approval of membership, and that a further sum of not less than one-fourth of such total shall be purchased at the end of each succeeding period of four months from the date of approval of membership.

(c) *Commencement of membership.* An institution that has been approved for membership shall become a member at the time it purchases its minimum stock requirement or the first installment thereof pursuant to this section.

(d) *Failure to purchase minimum stock requirement.* If an institution that

has submitted an application and been approved for membership fails to purchase its minimum stock requirement or its first installment within 60 calendar days of the date of its approval for membership, such approval shall be null and void and the institution, if it wants to become a member, shall be required to submit a new application for membership.

(e) *Reports.* The Bank shall make reports to FHFA setting forth purchases by institutions approved for membership of their minimum stock requirement pursuant to this section in accordance with the instructions provided in the Data Reporting Manual issued by FHFA, as amended from time to time.

§ 1263.21 Issuance and form of stock.

(a) A Bank shall issue to each new member, as of the effective date of membership, stock in the member's name for the amount of stock purchased and paid for in full.

(b) If the member purchases stock in installments, the stock shall be issued in installments with the appropriate number of shares issued after each payment is made.

(c) A Bank that has not converted to the capital structure authorized by the GLB Act may issue stock in certificated or uncertificated form at the discretion of the Bank.

(d) A Bank that has not converted to the capital structure authorized by the GLB Act may convert all outstanding certificated stock to uncertificated form at its discretion.

§ 1263.22 Adjustments in stock holdings.

(a) *Adjustment in general.* A Bank may from time to time increase or decrease the amount of stock any member is required to hold.

(b)(1) *Annual adjustment.* A Bank shall calculate annually, in the manner set forth in § 1263.20(a), each member's required minimum holdings of stock in the Bank in which it is a member using calendar year-end financial data provided by the member to the Bank, pursuant to § 1263.31(d), and shall notify each member of the adjustment. The notice shall clearly state that the Bank's calculation of each member's minimum stock holdings is to be used to determine the number of votes that the member may cast in that year's election of directors and shall identify the state within the district in which the member will vote. A member that does not agree with the Bank's calculation of the minimum stock requirement or with the identification of its voting state may request FHFA to review the Bank's determination. FHFA shall promptly determine the member's minimum required holdings and its proper voting state, which determination shall be final.

(2) *Redemption of excess shares.* If, in the case of a Bank that has not converted to the capital structure authorized by the GLB Act and after the annual adjustment required by paragraph (b)(1) of this section is made, the amount of stock that a member is required to hold is decreased, the Bank may, in its discretion and upon proper application of the member, retire such excess stock, and the Bank shall pay for each share upon surrender of the stock an amount equal to the par value thereof (except that if at any time FHFA finds that the paid-in capital of a Bank is or is likely to be impaired as a result of losses in or depreciation of the assets held, the Bank shall on the order of FHFA withhold from the amount to be paid in retirement of the stock a *pro rata* share of the amount of such impairment as determined by FHFA) or, at its election, the Bank may credit any part of such payment against the member's debt to the Bank. The Bank's authority to retire such excess stock shall be further subject to the limitations of section 6(f) of the Bank Act (12 U.S.C. 1426(f)).

(c) A member's stock holdings shall not be reduced under this section to an amount less than required by sections 6(b) and 10(c) of the Bank Act (12 U.S.C. 1426(b), 1430(c)).

§ 1263.23 Excess stock.

(a) *Sale of excess stock.* Subject to the restriction in paragraph (b) of this section, a member may purchase excess stock as long as the purchase is approved by the member's Bank and is permitted by the laws under which the member operates.

(b) *Restriction.* Any Bank with excess stock greater than 1 percent of its total assets shall not declare or pay any dividends in the form of additional shares of Bank stock or otherwise issue any excess stock. A Bank shall not issue excess stock, as a dividend or otherwise, if after the issuance, the outstanding excess stock at the Bank would be greater than 1 percent of its total assets.

Subpart E—Consolidations Involving Members

§ 1263.24 Consolidations involving members.

(a) *Consolidation of members.* Upon the consolidation of two or more institutions that are members of the same Bank into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate on the cancellation of its charter. Upon the consolidation of two or more institutions, at least two of which are members of different Banks, into one institution operating under the charter of one of the consolidating institutions, the membership of the surviving institution shall continue and the membership of each disappearing institution shall terminate upon cancellation of its charter, provided, however, that if more than 80 percent of the assets of the consolidated institution are derived from the assets of a disappearing institution, then the consolidated institution shall continue to be a member of the Bank of which that disappearing institution was a member prior to the consolidation, and the membership of the other institutions shall terminate upon the effective date of the consolidation.

(b) *Consolidation into nonmember*—(1) *In general.* Upon the consolidation of a member into an institution that is not a member of a Bank, where the consolidated institution operates under the charter of the nonmember institution, the membership of the disappearing institution shall terminate upon the cancellation of its charter.

(2) *Notification.* If a member has consolidated into a nonmember that has its principal place of business in a state in the same Bank district as the former member, the consolidated institution shall have 60 calendar days after the cancellation of the charter of the former member within which to notify the Bank of the former member that the consolidated institution intends to apply for membership in such Bank. If the consolidated institution does not so notify the Bank by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(3) *Application.* If such a consolidated institution has notified the appropriate Bank of its intent to apply for membership, the consolidated institution shall submit an application for membership within 60 calendar days of so notifying the Bank. If the consolidated institution does not submit an application for membership by the end of the period, the Bank shall require the liquidation of any outstanding indebtedness owed by the former member, shall settle all outstanding business transactions with the former

member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(4) *Outstanding indebtedness.* If a member has consolidated into a nonmember institution, the Bank need not require the former member or its successor to liquidate any outstanding indebtedness owed to the Bank or to redeem its Bank stock, as otherwise may be required under § 1263.29, during:

(i) The initial 60 calendar-day notification period;

(ii) The 60 calendar-day period following receipt of a notification that the consolidated institution intends to apply for membership; and

(iii) The period of time during which the Bank processes the application for membership.

(5) *Approval of membership.* If the application of such a consolidated institution is approved, the consolidated institution shall become a member of that Bank upon the purchase of the amount of Bank stock required by section 6 of the Bank Act (12 U.S.C. 1426). If a Bank's capital plan has not taken effect, the amount of stock that the consolidated institution is required to own shall be as provided in §§ 1263.20 and 1263.22. If the capital plan for the Bank has taken effect, the amount of stock that the consolidated institution is required to own shall be equal to the minimum investment established by the capital plan for that Bank.

(6) *Disapproval of membership.* If the Bank disapproves the application for membership of the consolidated institution, the Bank shall require the liquidation of any outstanding indebtedness owed by, and the settlement of all other outstanding business transactions with, the former member, and shall redeem or repurchase the Bank stock owned by the former member in accordance with § 1263.29.

(c) *Dividends on acquired Bank stock.* A consolidated institution shall be entitled to receive dividends on the Bank stock that it acquires as a result of a consolidation with a member in accordance with applicable FHFA regulations.

(d) *Stock transfers.* With regard to any transfer of Bank stock from a disappearing member to the surviving or consolidated member, as appropriate, for which the approval of FHFA is required pursuant to section 6(f) of the Bank Act (12 U.S.C. 1426(f)), as in effect prior to November 12, 1999, such transfer shall be deemed to be approved by FHFA by compliance in all applicable respects with the requirements of this section.

Subpart F—Withdrawal and Removal From Membership

§ 1263.26 Voluntary withdrawal from membership.

(a) *In general.* (1) Any institution may withdraw from membership by providing to the Bank written notice of its intent to withdraw from membership. A member that has so notified its Bank shall be entitled to have continued access to the benefits of membership until the effective date of its withdrawal, but the Bank need not commit to providing any further services, including advances, to a withdrawing member that would mature or otherwise terminate subsequent to the effective date of the withdrawal. A member may cancel its notice of withdrawal at any time prior to its effective date by providing a written cancellation notice to the Bank. A Bank may impose a fee on a member that cancels a notice of withdrawal, provided that the fee or the manner of its calculation is specified in the Bank's capital plan.

(2) A Bank shall notify FHFA within 10 calendar days of receipt of any notice of withdrawal or notice of cancellation of withdrawal from membership.

(b) *Effective date of withdrawal.* The membership of an institution that has submitted a notice of withdrawal shall terminate as of the date on which the last of the applicable stock redemption periods ends for the stock that the member is required to hold, as of the date that the notice of withdrawal is submitted, under the terms of a Bank's capital plan as a condition of membership, unless the institution has cancelled its notice of withdrawal prior to the effective date of the termination of its membership.

(c) *Stock redemption periods.* The receipt by a Bank of a notice of withdrawal shall commence the applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock held by that member that is not already subject to a pending request for redemption. In the case of an institution the membership of which has been terminated as a result of a merger or other consolidation into a nonmember or into a member of another Bank, the applicable stock redemption periods for any stock that is not subject to a pending notice of redemption shall be deemed to commence on the date on which the charter of the former member is cancelled.

(d) *Certification.* No institution may withdraw from membership unless, on the date that the membership is to terminate, there is in effect a certification from FHFA that the withdrawal of a member will not cause the Bank System to fail to satisfy its requirements under section 21B(f)(2)(C) of the Bank Act (12 U.S.C. 1441b(f)(2)(C)) to contribute toward the interest payments owed on obligations issued by the Resolution Funding Corporation.

§ 1263.27 Involuntary termination of membership.

(a) *Grounds.* The board of directors of a Bank may terminate the membership of any institution that:

(1) Fails to comply with any requirement of the Bank Act, any regulation adopted by FHFA, or any requirement of the Bank's capital plan;

(2) Becomes insolvent or otherwise subject to the appointment of a conservator, receiver, or other legal custodian under federal or state law; or

(3) Would jeopardize the safety or soundness of the Bank if it were to remain a member.

(b) *Stock redemption periods.* The applicable 6-month and 5-year stock redemption periods, respectively, for all of the Class A and Class B stock owned by a member and not already subject to a pending request for redemption, shall commence on the date that the Bank terminates the institution's membership.

(c) *Membership rights.* An institution whose membership is terminated involuntarily under this section shall cease being a member as of the date on which the board of directors of the Bank acts to terminate the membership, and the institution shall have no right to obtain any of the benefits of membership after that date, but shall be entitled to receive any dividends declared on its stock until the stock is redeemed or repurchased by the Bank.

Subpart G—Orderly Liquidation of Advances and Redemption of Stock

§ 1263.29 Disposition of claims.

(a) *In general.* If an institution withdraws from membership or its membership is otherwise terminated, the Bank shall determine an orderly manner for liquidating all outstanding indebtedness owed by that member to the Bank and for settling all other claims against the member. After all such obligations and claims have been extinguished or settled, the Bank shall return to the member all collateral pledged by the member to the Bank to secure its obligations to the Bank.

(b) *Bank stock.* If an institution that has withdrawn from membership or that otherwise has had its membership terminated remains indebted to the Bank or has outstanding any business

transactions with the Bank after the effective date of its termination of membership, the Bank shall not redeem or repurchase any Bank stock that is required to support the indebtedness or the business transactions until after all such indebtedness and business transactions have been extinguished or settled.

Subpart H—Reacquisition of Membership

§ 1263.30 Readmission to membership.

(a) *In general.* An institution that has withdrawn from membership or otherwise has had its membership terminated and which has divested all of its shares of Bank stock, may not be readmitted to membership in any Bank, or acquire any capital stock of any Bank, for a period of 5 years from the date on which its membership terminated and it divested all of its shares of Bank stock.

(b) *Exceptions.* An institution that transfers membership between two Banks without interruption shall not be deemed to have withdrawn from Bank membership or had its membership terminated.

Subpart I—Bank Access to Information

§ 1263.31 Reports and examinations.

As a condition precedent to Bank membership, each member:

(a) Consents to such examinations as the Bank or FHFA may require for purposes of the Bank Act;

(b) Agrees that reports of examinations by local, state or federal agencies or institutions may be furnished by such authorities to the Bank or FHFA upon request;

(c) Agrees to give the Bank or the appropriate Federal banking agency, upon request, such information as the Bank or the appropriate Federal banking agency may need to compile and publish cost of funds indices and to publish other reports or statistical summaries pertaining to the activities of Bank members;

(d) Agrees to provide the Bank with calendar year-end financial data each year, for purposes of making the calculation described in § 1263.22(b)(1); and

(e) Agrees to provide the Bank with copies of reports of condition and operations required to be filed with the member's appropriate Federal banking agency, if applicable, within 20 calendar days of filing, as well as copies of any annual report of condition and operations required to be filed.

Subpart J—Membership Insignia

§ 1263.32 Official membership insignia.

Members may display the approved insignia of membership on their documents, advertising and quarters, and likewise use the words ''Member Federal Home Loan Bank System.''

Dated: May 7, 2009.

James B. Lockhart III,

Director, Federal Housing Finance Agency.

[FR Doc. E9–11329 Filed 5–14–09; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

[FWS–R7–SM–2009–0001; 70101–1261–0000L6]

RIN 1018–AW30

Subsistence Management Regulations for Public Lands in Alaska—2010–11 and 2011–12 Subsistence Taking of Wildlife Regulations

AGENCIES: Forest Service, Agriculture; Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish regulations for hunting and trapping seasons, harvest limits, methods, and means related to taking of wildlife for subsistence uses during the 2010–11 and 2011–12 regulatory years. The Federal Subsistence Board completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle. When final, the resulting rulemaking will replace the existing subsistence wildlife taking regulations, which expire on June 30, 2010. This rule would also amend the customary and traditional use determinations of the Federal Subsistence Board and the general regulations on subsistence taking of fish and wildlife.

DATES: *Public meetings:* The Federal Subsistence Regional Advisory Councils will hold public meetings to receive comments and make proposals to change this proposed rule on several dates between August 25 and October 28, 2009, and then hold another round of public meetings to discuss and receive comments on the proposals, and make recommendations on the proposals to the Federal Subsistence Board, on several dates between February and April, 2010. The Board will discuss and evaluate proposed regulatory changes during a public meeting in Anchorage, AK, on May 4, 2010. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: Comments and proposals to change this proposed rule must be received or postmarked by November 5, 2009.

ADDRESSES: *Public meetings:* The Federal Subsistence Board and the Regional Advisory Councils' public meetings will be held at various locations in Alaska. See **SUPPLEMENTARY INFORMATION** for specific information on dates and locations of the public meetings.

Public comments: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery to:* USFWS, Office of Subsistence Management, 1011 East Tudor Road, MS 121, Attn: Theo Matuskowitz, Anchorage, AK 99503–6199.
- Hand delivery to the Designated Federal Official attending any of the Federal Subsistence Regional Advisory Council public meetings. See **SUPPLEMENTARY INFORMATION** for additional information on locations of the public meetings.

We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the Public Review Process section below for more information).

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Peter J. Probasco, Office of Subsistence Management; (907) 786–3888 or *subsistence@fws.gov.* For questions specific to National Forest System lands, contact Calvin Casipit, Regional Subsistence Program Leader, USDA, Forest Service, Alaska Region; (907) 586–7918.

SUPPLEMENTARY INFORMATION:

Background

Under Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126), the Secretary of the Interior and the Secretary of Agriculture (Secretaries) jointly implement the Federal Subsistence Management Program. This program grants a preference for subsistence uses of fish and wildlife resources on Federal public lands and waters in Alaska. The Secretaries first published regulations to carry out this program in the **Federal Register** on May 29, 1992 (57 FR 22940). The Program has subsequently amended these regulations several times. Because this program is a joint effort between Interior and Agriculture, these regulations are located in two titles of the Code of Federal Regulations (CFR): Title 36, ''Parks, Forests, and Public Property,'' and Title 50, ''Wildlife and Fisheries,'' at 36 CFR 242.1–28 and 50 CFR 100.1–28, respectively. The regulations contain subparts as follows: Subpart A, General Provisions; Subpart B, Program Structure; Subpart C, Board Determinations; and Subpart D, Subsistence Taking of Fish and Wildlife.

Federal Subsistence Board

Consistent with subpart B of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board is made up of:

- Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture;
- Alaska Regional Director, U.S. Fish and Wildlife Service;
- Alaska Regional Director, U.S. National Park Service;
- Alaska State Director, U.S. Bureau of Land Management;
- Alaska Regional Director, U.S. Bureau of Indian Affairs; and
- Alaska Regional Forester, U.S. Forest Service.

Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, which set forth the basic program, and they continue to work together on regularly revising the subpart D regulations, which, among other things, set forth specific harvest seasons and limits.

Federal Subsistence Regional Advisory Councils

In administering the program, the Secretaries divided Alaska into 10 subsistence resource regions, each of which is represented by a Regional Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Federal public lands in Alaska. The Regional Council members represent varied geographical, cultural, and user diversity within each region.

Public Review Process—Comments, Proposals, and Public Meetings

The Regional Councils have a substantial role in reviewing this proposed rule and making recommendations for the final rule. The Federal Subsistence Board (Board), through the Regional Councils, will hold meetings on this proposed rule at the following locations in Alaska, on the following dates:

Region 1—Southeast Regional Council	Yakutat	October 6, 2009.
Region 2—Southcentral Regional Council	Cooper Landing	October 13, 2009.
Region 3—Kodiak/Aleutians Regional Council	Kodiak	September 10, 2009.
Region 4—Bristol Bay Regional Council	Naknek	October 27, 2009.
Region 5—Yukon–Kuskokwim Delta Regional Council	TBA	October 1, 2009.
Region 6—Western Interior Regional Council	Aniak	October 6, 2009.
Region 7—Seward Peninsula Regional Council	Nome	October 1, 2009.
Region 8—Northwest Arctic Regional Council	Kotzebue	September 2, 2009.
Region 9—Eastern Interior Regional Council	Central	October 13, 2009.
Region 10—North Slope Regional Council	Barrow	August 25, 2009.

During November 2009, the written proposals to change subpart D hunting and trapping regulations and subpart C customary and traditional use determinations will be compiled and distributed for public review. During the 30-day public comment period, which is presently scheduled to end on December 31, 2009, written public comments will be accepted on the distributed proposals.

The Board, through the Regional Councils, will hold a second series of meetings in February through April 2010, to receive comments on specific proposals and to develop recommendations to the Board. Meeting dates and locations will be published in the **Federal Register** prior to those meetings:

A notice will be published of specific dates, times, and meeting locations in local and statewide newspapers prior to both series of meetings. Locations and dates may change based on weather or local circumstances. The amount of work on each Regional Council's agenda determines the length of each Regional Council meeting.

The Board will discuss and evaluate proposed changes to the subsistence management regulations during a public meeting scheduled to be held in Anchorage, AK, on May 4, 2010. The Council Chairs, or their designated representatives, will present their respective Councils' recommendations at the Board meeting. Additional oral testimony may be provided on specific proposals before the Board at that time. At that public meeting, the Board will deliberate and take final action on proposals received that request changes to this proposed rule.

Proposals to the Board to modify wildlife harvest regulations and customary and traditional use determinations must include the following information:

a. Name, address, and telephone number of the requestor;

b. Each section and/or paragraph designation in this proposed rule for which changes are suggested;

c. A statement explaining why each change is necessary;

d. Proposed wording changes; and

e. Any additional information that you believe will help the Board in evaluating the proposed change.

The Board rejects proposals that fail to include the above information, or proposals that are beyond the scope of authorities in § __.24, subpart C (the regulations governing customary and traditional use determinations), and §§ __.25, and __.26, subpart D (the general and specific regulations governing the subsistence take of wildlife). During the May 4, 2010, meeting, the Board may defer review and action on some proposals to allow time for local cooperative planning efforts, or to acquire additional needed information. The Board may elect to defer taking action on any given proposal if the workload of staff,

Regional Councils, or the Board becomes excessive. These deferrals may be based on recommendations by the affected Regional Council(s) or staff members, or on the basis of the Board's intention to do least harm to the subsistence user and the resource involved. The Board may consider and act on alternatives that address the intent of a proposal while differing in approach.

Tribal Consultation and Comment

As expressed in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments,'' the Federal officials that have been delegated authority by the Secretaries are committed to honoring the unique government-to-government political relationship that exists between the Federal Government and Federally Recognized Indian tribes (tribes) as listed in 73 FR 18533 (April 4, 2008). The Alaska National Interest Lands Conservation Act does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. However, because tribal members are affected by subsistence fishing, hunting, and trapping regulations, the Secretaries have elected to provide tribes an opportunity to consult on this rule.

The Secretaries will engage in outreach efforts for this rule, including a notification letter, to ensure that tribes are advised of the mechanisms by which they can participate. The Board provides a variety of opportunities for consultation: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, email, or phone at any time during the rule-making process. The Secretaries will commit to efficiently and adequately reviewing the government-to-government consultation process with regard to subsistence rulemaking.

The Board will consider tribes' information, input, and recommendations, and address their concerns as much as practicable. However, in keeping with ANILCA § 805(c), the Board shall follow recommendations of the Regional Advisory Councils for the taking of fish and wildlife unless their recommendation is determined to be not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. The Board will inform the tribes how their recommendations were considered.

Developing the 2010–12 Wildlife Seasons and Harvest Limit Regulations

Subpart D regulations are subject to periodic review and revision. The Federal Subsistence Board completes the biennial process of revising subsistence hunting and trapping regulations in even-numbered years and subsistence fishing and shellfish regulations in odd-numbered years; public proposal and review processes take place during the preceding year. The Board also addresses customary and traditional use determinations during the applicable biennial cycle.

The text of the final rule published June 24, 2008 (73 FR 35726) for the 2008–10 subparts C and D regulations is the text of this proposed rule. These regulations will take effect on July 1, 2010, unless subsequent Board action changes elements as a result of the public review process outlined above in this document.

Compliance With Statutory and Regulatory Authorities

National Environmental Policy Act

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. The Final Environmental Impact Statement (FEIS) was published on February 28, 1992. The Record of Decision (ROD) on Subsistence Management for Federal Public Lands in Alaska was signed April 6, 1992. The selected alternative in the FEIS (Alternative IV) defined the administrative framework of an annual regulatory cycle for subsistence regulations.

A 1997 environmental assessment dealt with the expansion of Federal jurisdiction over fisheries and is available at the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior, with concurrence of the Secretary of Agriculture, determined that expansion of Federal jurisdiction does not constitute a major Federal action significantly affecting the human environment and, therefore, signed a Finding of No Significant Impact.

Section 810 of ANILCA

An ANILCA Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final section 810 analysis determination appeared in the April 6, 1992, ROD and concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting subsistence regulations, may have some local impacts on subsistence uses, but will not likely restrict subsistence uses significantly.

During the subsequent environmental assessment process for extending fisheries jurisdiction, an evaluation of the effects of this rule was conducted in accordance with section 810. That evaluation also supported the Secretaries' determination that the rule will not reach the ''may significantly restrict'' threshold that would require notice and hearings under ANILCA section 810(a).

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and assigned OMB control number 1018–0075, which expires October 31, 2009. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a current valid OMB control number.

Regulatory Planning and Review (Executive Order 12866)

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866. OMB bases its determination upon the following four criteria:

a. Whether the rule will have an annual effect of $100 million or more on the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

b. Whether the rule will create inconsistencies with other agencies' actions.

c. Whether the rule will materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. Whether the rule raises novel legal or policy issues.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect

on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, we estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, this amount would equate to about $6 million in food value statewide. Based upon the amounts and values cited above, the Departments certify that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Executive Order 12630

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

Unfunded Mandates Reform Act

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.,* that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any State or local entities or tribal governments.

Executive Order 12988

The Secretaries have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

Executive Order 13132

In accordance with Executive Order 13132, the rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

Executive Order 13175

The Alaska National Interest Lands Conservation Act does not specifically provide rights to tribes for the subsistence taking of wildlife, fish, and shellfish. And while, for this rule, EO 13175 does not require the agencies to consult with tribes, the Secretaries have elected to provide tribes an opportunity to consult on this rule. The Board will provide a variety of opportunities for consultation through: Proposing changes to the existing rule; commenting on proposed changes to the existing rule; engaging in dialogue at the Regional Advisory Council meetings; engaging in dialogue at the Board's meetings; and providing input in person, by mail, e-mail, or phone at any time during the rulemaking process.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, and no Statement of Energy Effects is required.

Drafting Information

Theo Matuskowitz drafted these regulations under the guidance of Peter J. Probasco of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional assistance was provided by:

- Daniel Sharp, Alaska State Office, Bureau of Land Management;
- Sandy Rabinowitch and Nancy Swanton, Alaska Regional Office, National Park Service;
- Drs. Warren Eastland and Glenn Chen, Alaska Regional Office, Bureau of Indian Affairs;
- Jerry Berg and Carl Jack, Alaska Regional Office, U.S. Fish and Wildlife Service; and
- Calvin Casipit, Alaska Regional Office, U.S. Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Federal Subsistence Board proposes to amend 36 CFR 242 and 50 CFR 100 for the 2010–11 and 2011–12 regulatory years.

Dated: May 4, 2009.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: May 1, 2009.

Calvin Casipit,

Acting Subsistence Program Leader, USDA-Forest Service.

[FR Doc. E9–11130 Filed 5–14–09; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2009–0005; 92220–1113–0000–C6]

RIN 1018–AW42

Endangered and Threatened Wildlife and Plants; Proposed Rule To Reclassify the Oregon Chub (Oregonichthys crameri) From Endangered to Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: Under the authority of the Endangered Species Act of 1973, as amended (Act), we, the U.S. Fish and Wildlife Service (Service), propose to reclassify the Oregon chub (*Oregonichthys crameri*) from endangered to threatened. This proposal is based on a thorough review of the best available scientific data, which indicate that the species' status has improved such that it is not currently in danger of extinction throughout all or a significant portion of its range. We seek information, data, and comments from the public regarding the Oregon chub and this proposal.

DATES: We will accept comments received on or before July 14, 2009. Public hearing requests must be received by June 29, 2009.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AW42; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (*see* the Public Comments section below for more information).

Public Hearing Requests: To request a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266; (telephone 503/231–6179). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

Our intent is to use the best available commercial and scientific data as the foundation for all endangered and threatened species classification decisions. Comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule to downlist the Oregon chub are hereby solicited. Comments particularly are sought concerning:

(1) Biological information concerning the Oregon chub, including competition from non-native species and the risks associated with loss of genetic diversity in isolated populations;

(2) Relevant data concerning any current or likely future threats (or lack thereof) to the Oregon chub;

(3) Additional information concerning the range, distribution, population size and population trends of the Oregon chub, including the locations of any additional populations; and

(4) Information regarding management plans or other mechanisms that provide protection to Oregon chub or their habitats.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in the **ADDRESSES** section. We will not accept comments sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

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

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov*, or by appointment during normal business hours at the Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon 97266, (503/231–6179).

Public Hearing

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be made in writing and addressed to the Field Supervisor (*see* **FOR FURTHER INFORMATION CONTACT** section above).

Previous Federal Action

In our December 30, 1982, Review of Vertebrate Wildlife for Listing as Endangered or Threatened Species Under the Act, we listed the Oregon chub as a Category 2 candidate species (47 FR 58454). Category 2 candidates, a designation no longer used by the Service, were species for which information contained in Service files indicated that proposing to list was possibly appropriate but additional data were needed to support a listing proposal. The Oregon chub maintained its Category 2 status in both the September 18, 1985 (50 FR 37958) and January 6, 1989 (54 FR 554) Notices of Review.

On April 10, 1990, the Service received a petition to list the Oregon chub as an endangered species and to designate critical habitat. The petition and supporting documentation were submitted by Dr. Douglas F. Markle and Mr. Todd N. Pearsons, both affiliated with Oregon State University. The petitioners submitted taxonomic, biological, distributional, and historical information and cited numerous scientific articles in support of the petition. The petition and accompanying data described the Oregon chub as endangered because it had experienced a 98 percent range reduction and remaining populations faced significant threats. On November 1, 1990, the Service published a 90-day finding indicating that the petitioners had presented substantial information indicating that the requested action may be warranted and initiated a status review (55 FR 46080).

On November 19, 1991, the Service published a 12-month finding on the petition concurrent with a proposal to list the species as endangered (56 FR 58348). A final rule listing the Oregon chub as endangered was published in the **Federal Register** on October 18, 1993 (58 FR 53800). A 5-year review of the Oregon chub's status was completed in February 2008 (U.S. Fish and Wildlife Service 2008a, pp. 1–34); this review concluded that the Oregon chub's status had substantially improved since listing, and that the Oregon chub no longer met the definition of an endangered species, but does meet the definition of a threatened species, under the Act. The review, therefore, recommended that the Oregon chub should be downlisted from endangered to threatened.

On March 10, 2009, the Service published a proposed rule to designate critical habitat (74 FR 10412) for the Oregon chub. The public comment period on the proposed critical habitat rule closes on May 11, 2009.

Species Information

The Oregon chub is a small minnow (Family: Cyprinidae) endemic to the Willamette River Basin in western Oregon (Markle *et al.* 1991, p. 288). The Oregon chub has an olive-colored back grading to silver on the sides and white on the belly (Markle *et al.* 1991, p. 286). Oregon chub are found in slack water off-channel habitats such as beaver ponds, oxbows, side channels, backwater sloughs, low-gradient tributaries, and flooded marshes. These habitats usually have little or no water flow, silty and organic substrate, and abundant aquatic vegetation for hiding and spawning cover (Pearsons 1989, p. 12; Scheerer and McDonald 2000, p. 9). Summer temperatures in shallow ponds inhabited by Oregon chub generally exceed 16 degrees Celsius (C) (61 degrees Fahrenheit (F)) (Scheerer *et al.* 1998, p. 26). In the winter months, Oregon chub are found buried in detritus or concealed in aquatic vegetation (Pearsons 1989, p. 16).

Oregon chub reach maturity at about 2 years of age (Scheerer and McDonald 2003, p. 78) and in wild populations can

live up to 9 years. Most individuals over 5 years old are females (Scheerer and McDonald 2003, p. 68). Oregon chub spawn in warm (16 to 21 degrees C (61 to 70 degrees F)) shallow water from June through August (Scheerer and McDonald 2000, p. 10). The diet of Oregon chub collected in a May sample consisted primarily of copepods, cladocerans, and chironomid larvae (Markle *et al.* 1991, p. 288).

In the early 1990s, Oregon chub populations were found predominantly in the Middle Fork Willamette River (Middle Fork), with a few, small populations found in the Mid-Willamette River, Santiam River, and Coast Fork Willamette River (Coast Fork). The species is now well distributed throughout the Willamette Basin (in Polk, Marion, Linn, Lane and Benton Counties, Oregon), with populations in the Santiam River (8 sites), Mid-Willamette River (6 sites), McKenzie River (4 sites), Middle Fork (14 sites), and Coast Fork (3 sites) (Scheerer *et al.* 2007, p. 2). There are currently 19 populations that contain more than 500 adults each; 16 of these have a stable or increasing trend (Scheerer 2008a, p. 6).

Review of the Recovery Plan

The Service published a final recovery plan for the Oregon chub in 1998 (U.S. Fish and Wildlife Service 1998). Recovery plans are intended to guide actions to recover listed species and to provide measurable objectives against which to measure progress towards recovery, however, precise attainment of the recovery criteria is not a prerequisite for downlisting or delisting. The Oregon chub recovery plan established the following criteria for downlisting the species from endangered to threatened:

(1) Establish and manage 10 populations of at least 500 adults each;

(2) All of these populations must exhibit a stable or increasing trend for 5 years; and

(3) At least three populations must be located in each of the three sub-basins of the Willamette River identified in the plan (Mainstem Willamette River, Middle Fork, and Santiam River).

The recovery plan established the following criteria for delisting (*i.e.,* removing the species from the List of Endangered and Threatened Wildlife):

(1) Establish and manage 20 populations of at least 500 adults each;

(2) All of these populations must exhibit a stable or increasing trend for 7 years;

(3) At least four populations must be located in each of the three sub-basins (Mainstem Willamette River, Middle Fork, and Santiam River); and

(4) Management of these populations must be guaranteed in perpetuity.

Recovery actions specified in the recovery plan to achieve the downlisting and delisting goals included managing existing sites, establishment of new populations, research into the ecology of the species, and public education and outreach to foster greater understanding of the Oregon chub and its place in the natural environment of the Willamette Basin (U.S. Fish and Wildlife Service 1998, pp. 28–44).

Recovery Plan Implementation

When the Oregon chub was listed as endangered in 1993, it was known to occur at only nine locations within a 30-kilometer (18.6-mile) reach of the Willamette River, representing just two percent of its historical range (58 FR 53800, p. 53801). Since 1992, the Service, Oregon Department of Fish and Wildlife (ODFW), U.S. Army Corps of Engineers (Corps), U.S. Forest Service, Oregon Parks and Recreation Department and Oregon Department of Transportation have funded ODFW staff to conduct surveys for Oregon chub throughout the Willamette Valley. ODFW has surveyed 650 off-channel habitats and small tributaries in the Willamette River Basin (Scheerer 2007, p. 92), greatly increasing our knowledge of the current and potential habitat available to the Oregon chub. Other research projects have resulted in new information on the species' habitat use, timing of spawning, and age and growth patterns (U.S. Fish and Wildlife Service 2008a, pp. 13–15).

The status of the Oregon chub has dramatically improved since it was listed as endangered. The improvement is due largely to the implementation of actions identified in the Oregon chub recovery plan. This includes the discovery of many new populations as a result of ODFW's exhaustive surveys of the basin, and the establishment of additional populations via successful reintroductions within the species' historical range (Scheerer 2007, p. 97). To date, Oregon chub populations have been introduced at 15 sites (7 in the Mainstem Willamette Sub-basin, 5 in the Middle Fork Sub-basin, and 3 in the Santiam Sub-basin) (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6). Introduced populations have been established in suitable habitats with low connectivity to other suitable aquatic habitats to reduce the risk of invasion by nonnative fishes (*see* Factor C below for more information) (Scheerer 2007, p. 98). At present, 9 of these populations persist and exhibit stable or increasing trends; 1 population was reintroduced too recently to evaluate success (*i.e.,* the population introduced in 2008 at St. Paul Ponds); and 5 introduced populations have been extirpated or are not likely to remain viable. Reasons for reintroduction failures include: pond desiccation, low dissolved oxygen, unauthorized introductions of nonnative predatory fishes, and high mortality of introduced fish (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6; Scheerer 2009a, p. 1).

Currently, there are 36 Oregon chub populations, of which 19 have more than 500 adults (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6). Fifteen years have passed since listing, and the species is now relatively abundant and well distributed throughout much of its presumed historical range. The risk of extinction has been substantially reduced as threats have been managed, and as new populations have been discovered and re-established. The Oregon chub has exceeded or met nearly all of the criteria for downlisting to threatened described in the recovery plan. A review of the species' current status relative to the downlisting criteria follows.

Downlisting Criterion 1: Establish and manage 10 populations of at least 500 adults each. This criterion has been exceeded. There are 19 populations with more than 500 adult Oregon chub (table 1).

Downlisting Criterion 2: All of these populations must exhibit a stable or increasing trend for 5 years. This criterion has been exceeded; there are 16 populations with at least 500 adults that are stable or increasing (table 1). Scheerer *et al.* (2007, p. 4) defined abundance trends as increasing, declining, stable, or not declining using linear regression of abundance estimates over time for each population with more than 500 adult fish over the last 5 years. When the slope of this regression was negative and significantly different from zero ($P<0.10$), the population was categorized as declining. When the slope was positive and significantly different from zero ($P<0.10$), the population was categorized as increasing. When the slope was not significantly different from zero ($P>0.10$), Scheerer *et al.* (2007, p. 4) calculated the coefficient of variation of the abundance estimates to discriminate between populations that were stable (*i.e.,* low variation in population abundance estimates) and those that were unstable but not declining (*i.e.,* high variation in population abundance estimates). When the coefficient of variation was less than 1.0, the

population was defined as stable; otherwise, the population was considered unstable but not declining (table 1).

Downlisting Criterion 3: At least three populations (which meet criteria 1 and 2 above) must be located in each of the three sub-basins of the Willamette River (Mainstem Willamette River, Middle Fork Willamette, and Santiam River). This criterion has been exceeded in two sub-basins, and is nearly accomplished in the third. In the Mainstem Willamette River sub-basin, there are 6 populations with 500 or more Oregon chub with stable or increasing trends; in the Middle Fork Willamette sub-basin, there are 8 populations with 500 or more Oregon chub with stable or increasing trends; and in the Santiam River sub-basin, there are 3 populations with 500 or more Oregon chub, but only 2 with stable or increasing trends over the last 5 years (Table 1). Five-year trends were calculated for abundant populations (>500 individuals for the last 5 years) only. Table 1 shows the populations by sub-basin.

TABLE 1—OREGON CHUB POPULATION ESTIMATES AND TRENDS

[From Scheerer *et al.* 2007, p. 2; Scheerer, 2008a, p. 6, Scheerer 2008b, p. 1]

Population site name	Owner [1]	Population estimate [2]	5-Year trend [3]
Santiam River Sub-Basin			
Foster Pullout Pond	Corps	2,640	stable.
Gray Slough	Private	660	stable.
South Stayton Pond	ODFW	1,710	
Geren Island North Channel	City of Salem	210	declining.
Pioneer Park Backwater	Private	320	
Stayton Public Works Pond	City of Stayton	70	
Santiam I–5 Side Channels	ODOT	(22)	
Green's Bridge Slough	Private	(8)	
Mainstem Willamette Sub-Basin (Includes McKenzie River and Coast Fork)			
Ankeny Willow Marsh	USFWS	36,450	increasing.
Dunn Wetland	Private	34,530	stable.
Finley Gray Creek Swamp	USFWS	2,140	increasing.
Finley Cheadle Pond	USFWS	3,520	increasing.
Finley Display Pond	USFWS	830	increasing.
Muddy Creek	Private	(3)	
Russell Pond	Private	650	stable.
Shetzline Pond	Private	200	
Big Island	Private	130	
Green Island	Private	(12)	
Herman Pond	USFS	180	
Coast Fork Side Channels	OPRD/ODOT	80	
Lynx Hollow Side Channels	OPRD	(2)	
Middle Fork Sub-Basin			
Shady Dell Pond	USFS	7,250	increasing.
E. Bristow St. Park—Berry Slough	OPRD	5,460	increasing.
Dexter Reservoir RV Alcove— DEX3	Corps	4,020	increasing.
Wicopee Pond	USFS	5,430	stable.
Fall Creek Spillway Ponds	Corps	3,050	declining.
Buckhead Creek	USFS	1,260	declining.
East Fork Minnow Creek Pond	ODOT	2,160	stable.
Elijah Bristow Island Pond	OPRD	1,620	stable.
Hospital Pond	Corps	3,680	stable.
Dexter Reservoir Alcove—PIT1	Corps	680	stable.
Haws Pond	Private	280	
E. Bristow St. Park—NE Slough	OPRD	230	
Jasper Park Slough	OPRD	(1)	
St. Paul Ponds	ODFW	(21)	

[1] Owner abbreviations: Corps = U.S. Army Corps of Engineers, USFWS = U.S. Fish and Wildlife Service, ODOT = Oregon Department of Transportation, OPRD = Oregon Parks and Recreation Department, ODFW = Oregon Department of Fish and Wildlife.

[2] Population estimate is the most recent available (Fall 2007 or Spring 2008). Abundances are mark—recapture estimates except those shown in parentheses, which are the number of fish collected.

[3] 5-year trends were calculated for abundant populations (>500 individuals for the last 5 years) only.

Additional Conservation Measures

The Oregon Chub Working Group (Working Group) was formed in 1991. This group of Federal and State agency biologists, academics, land managers and others meet each year to share information on the status of the Oregon chub, results of new research, and ongoing threats to the species. The Working Group has been an important force in improving the conservation status of the Oregon chub.

An interagency conservation agreement was established for the Oregon chub in 1992, prior to listing (U.S. Fish and Wildlife Service 1998, p. 59). ODFW, Oregon Department of Parks and Recreation, Corps, U.S. Bureau of

Land Management, U.S. Fish and Wildlife Service, and U.S. Forest Service are the parties to the agreement. The objectives of the conservation agreement are to: (1) Establish a task force drawn from participating agencies to oversee and coordinate Oregon chub conservation and management actions, (2) protect existing populations, (3) establish new populations, and (4) foster greater public understanding of the species, its status, and the factors that influence it (U.S. Fish and Wildlife Service 1998, pp. 65–66).

The Oregon chub is designated as ''Sensitive-Critical'' by ODFW. The ''Sensitive'' species classification was created under Oregon's Sensitive Species Rule (OAR 635–100–040) to address the need for a proactive species conservation approach. The Sensitive Species List is a nonregulatory tool that helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as ''threatened'' or ''endangered'' under the Oregon Endangered Species Act (ORS 496.171, 496.172, 496.176, 496.182 and 496.192). Species designated as Sensitive-Critical are those for which listing as threatened or endangered would be appropriate if immediate conservation actions were not taken. This designation encourages but does not require the implementation of any conservation actions for the species.

Summary of Factors Affecting the Species

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. ''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)). Once the ''species'' is determined, we then evaluate whether that species may be endangered or threatened because of one or more of the five factors described in section 4(a)(1) of the Act. We must consider these same five factors in reclassifying or delisting a species. For species that are already listed as threatened or endangered, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is ''endangered'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range, and is ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. The word ''range'' is used here to refer to the range in which the species currently exists, and the word ''significant'' refers to the value of that portion of the range being considered to the conservation of the species. The ''foreseeable future'' is the period of time over which events or effects reasonably can or should be anticipated, or trends reasonably extrapolated; see discussion following Factor E, below.

Following a rangewide threats analysis we evaluate whether the Oregon chub is threatened or endangered in any significant portion(s) of its range.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Historical records indicate that the Oregon chub was distributed throughout the Willamette Basin, from the Clackamas River in the north, to the Coast Fork and Middle Fork in the south (Markle 1991, p. 288). When the Oregon chub was listed as endangered in 1993, the species was known to exist at only nine locations, representing only 2 percent of the species' historical range (Markle 1991, pp. 288–289; Scheerer *et al.* 2007, p. 2). Four of these locations had fewer than 10 individuals (Scheerer *et al.* 2007, p. 2). This precipitous decline in the species' abundance and distribution was attributed to the extensive channelization, dam construction, and chemical contamination that occurred in the Willamette Basin, particularly from the 1940s through the late 20th century (Pearsons 1989, pp. 29–30).

There are at least 371 dams in the Willamette River Basin, most of which were constructed during the period 1950 to 1980 (Hulse *et al.* 2002, p. 30). These dams reduced the magnitude, extent, and frequency of flooding in the basin, which dramatically reduced the amount of slough and side channel habitats used by the Oregon chub (Hulse *et al.* 2002, pp. 28–30). Other structural changes, such as revetment and channelization, diking and drainage, and the removal of floodplain vegetation, eliminated or altered the side channels and sloughs used by the Oregon chub, and destroyed the natural processes that replenish these slack water habitats (Hjort *et al.* 1984, p. 73; Sedell and Frogatt 1984, p. 1833; Hulse *et al.* 2002, p. 27). Analysis of historical records shows that over one-half of the Willamette's sloughs and alcoves had been lost by 1995 (Hulse *et al.* 2002, p. 18). Although the Oregon chub evolved in a dynamic environment in which flooding periodically created and reconnected habitat for the species, currently most populations of Oregon chub are isolated from other chub populations due to the reduced frequency and magnitude of flood events and the presence of migration barriers such as impassable culverts and beaver dams (Scheerer *et al.* 2007, p. 9).

In the 15 years since the Oregon chub was listed as endangered, concerted efforts by Federal, State, and local governments and private landowners have increased the number of Oregon chub populations from 9 to 36 (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6). This dramatic increase in the number of populations is a result of the discovery of new populations through extensive surveys of suitable habitats throughout the Willamette Basin and the establishment of new populations through successful reintroductions within their historical range (Scheerer 2007, p. 97). Since 1992, Oregon chub have been reintroduced to 15 locations, resulting in the successful establishment of 9 populations (Scheerer *et al.* 2007, p. 2; Scheerer 2008a, p. 6).

The analysis of threats in the final rule to list the Oregon chub as an endangered species and the recovery plan for the species discussed numerous potential threats to water quality in Oregon chub habitats. Many Oregon chub populations occur near rail, highway, and power transmission corridors, agricultural fields, and within public park and campground facilities, and there was concern that these populations could be threatened by chemical spills, runoff, or changes in water level or flow conditions caused by construction, diversions, or natural desiccation (58 FR 53800, October 18, 1993; U.S. Fish and Wildlife Service 1998, p. 14, Scheerer 2008c, p. 1). In the 15 years since listing, a few of these concerns have been realized, and are discussed in the paragraphs below.

Excessive siltation from ground disturbing activities in the watershed, such as logging upstream of Oregon chub habitat, can degrade or destroy Oregon chub habitat. The threat of siltation due to logging in the watershed has been identified at five sites: Green Island North Channel, Finley Gray Creek Swamp, East Fork Minnow Creek Pond, Buckhead Creek, and Wicopee Pond (Scheerer 2008c, p. 1). In the 1990s, a large part of the Minnow Creek Watershed in the Middle Fork Willamette Sub-basin was logged; flood events in the watershed in 1996, 1997, and 1998 caused accelerated

sedimentation in the beaver pond at East Fork Minnow Creek Pond, and over half of the open water wetted area of the Oregon chub habitat there was lost as sediment filled the pond (Scheerer 2009b, p. 1). The Oregon chub population in East Fork Minnow Creek Pond declined dramatically following these floods and the resulting sedimentation (Scheerer 2009b, p. 1).

Water quality investigations at sites in the Middle Fork and Mainstem Willamette sub-basins have found some adverse effects to Oregon chub habitats. Nutrient enrichment may have caused the crash of the Oregon chub population at Oakridge Slough on the Middle Fork. The slough is downstream from the Oakridge Sewage Treatment Plant and has a thick layer of decaying organic matter, which may limit the amount of useable habitat available to the chub (Buck 2003, p. 2). In the late 1990s, the Oregon chub population in Oakridge Slough peaked at nearly 500 individuals; since then, the population has apparently declined to zero (Scheerer *et al.* 2007, p. 2). Increased nitrogen and phosphorus concentrations have been detected in the slough; while the nutrient concentrations are not believed to be directly harmful to Oregon chub, the elevated nutrient levels may have resulted in eutrophication of the pond, with associated anoxic conditions unsuitable for chub, or increased plant and algal growth that severely reduced habitat availability (Buck 2003, p. 12).

Studies at William L. Finley National Wildlife Refuge have found evidence of elevated levels of nutrients and pesticides in Oregon chub habitats (Materna and Buck 2007, p. 67). Water samples were collected in 1998 from Gray Creek Swamp, which is home to a large population of Oregon chub. Analyses detected three herbicides, although all were below criteria levels recommended for protection of aquatic life; however, one form of nitrogen (total Kjeldahl N) exceeded Environmental Protection Agency criteria levels recommended for protection of aquatic life in the Willamette Valley (Materna and Buck 2007, p. 67). The source of the contamination is likely agricultural runoff from farm fields adjacent to the refuge (Materna and Buck 2007, p. 68). We note that EPA's recommended criteria for protection of aquatic life are not intended to be protective of all aquatic life, and may not be fully protective of the Oregon Chub. EPA and the Service are working together to assess the effects of pollutants on the Oregon chub through section 7 consultation on Oregon water quality standards.

Fluctuating water levels in Lookout Point Reservoir on the Middle Fork Willamette River were limiting the breeding success of the Oregon chub population in Hospital Pond, which provides habitat for the species in a pool connected to the reservoir by a culvert. In 2001, 2002, and 2003, the Corps, which manages Lookout Point Reservoir, implemented a series of projects to protect the population of Oregon chub in Hospital Pond. The goal was to allow the Corps to manage the water level in Lookout Point Reservoir independently of the water elevation in Hospital Pond. The Corps installed a gate on Hospital Pond's outlet culvert and lined the porous berm between the pond and reservoir; these modifications allow the Corps to maintain the water level needed to support Oregon chub spawning in Hospital Pond independent of the water level in the reservoir (U.S. Fish and Wildlife Service 2002, pp. 1–11). The Corps also excavated additional area to create more suitable spawning habitat in the pond (U.S. Fish and Wildlife Service 2003, pp. 1–3). The result of these management actions has been a large stable population of Oregon chub in Hospital Pond (Scheerer 2008a, p. 6).

Most of the known Oregon chub populations occur on lands with some level of protective status and management (*see* Table 1). The Service manages several Oregon chub populations on the Finley and Ankeny units of the Willamette Valley National Wildlife Refuge Complex (Refuge). Recovery of the Oregon chub is a high priority for the Refuge. The Refuge actively monitors the status of the populations, habitat quality, and nonnative fish presence; when threats are detected, the Refuge implements management actions to reverse the threats (Smith 2008, p. 1).

Five populations of Oregon chub occur on lands managed by the Corps; the Corps manages Oregon chub in accordance with the Service's biological opinion on the Willamette Project. In July 2008, the Corps, Bonneville Power Administration (BPA), and Bureau of Reclamation (BOR) completed formal consultation with the Service under section 7(a)(2) of the Endangered Species Act on the operation and maintenance of the Willamette Project, the system of 13 dams and associated impoundments that provide flood control, irrigation, municipal and industrial water supply, navigation, fish and wildlife conservation, flow augmentation, hydroelectric power generation, and recreation to the Willamette Valley. The Service concluded that the project would not jeopardize the continued existence of the Oregon chub (U.S. Fish and Wildlife Service 2008b, pp. 1–204). The Service's biological opinion describes the measures that will be implemented by the Corps, BPA, and BOR to maintain and improve habitat for the Oregon chub. These measures include:

(1) Monitoring the status of Oregon chub populations affected by operation and maintenance of the dams to gain a better understanding of the influence of the Willamette Project on species;

(2) Managing water levels in Oregon chub habitats directly affected by reservoir operations;

(3) Relocating Oregon chub from ponds adversely affected by reservoir operations to new locations with better prospects for long-term protection;

(4) Studies to identify the effects of flow management on Oregon chub habitats; and

(5) Funding a pilot study to investigate the impact of floodplain restoration and reconnection on fish communities in river reaches below Willamette Project dams.

Operation and maintenance of the Willamette Project under the new biological opinion will result in improved protections for the Oregon chub and new information that will benefit the species throughout the Willamette Basin.

The Oregon Department of Transportation has developed and is implementing a plan to protect and enhance Oregon chub populations on the agency's properties or those which may be affected by highway maintenance on the Santiam River, Coast Fork Willamette River, and Middle Fork Willamette River (Scheerer 2005, pp. 1–21).

The Oregon chub populations at Elijah Bristow State Park and Jasper Park on the Middle Fork are managed by the Oregon Parks and Recreation Department, which uses the Service's recovery plan as guidance to ensure conservation of the chub populations within the parks (Schleier 2008).

The U.S. Forest Service monitors and manages several Oregon chub populations on the Middle Fork (Scheerer 2008b, p. 1).

In addition to the management and protection provided to the Oregon chub on Federal and State lands, two Safe Harbor Agreements have been completed to guide management of Oregon chub populations on private lands. Safe Harbor Agreements are voluntary arrangements between the Service and cooperating non-Federal landowners to promote management for listed species on non-Federal property while giving assurances to participating

landowners that no additional future regulatory restrictions will be imposed. The Service's Oregon Fish and Wildlife Office is preparing a programmatic Safe Harbor Agreement to allow more landowners to enroll in the program, which, based on past experience, is likely to result in the reintroduction of Oregon chub populations on more private lands throughout the species' historical range.

Summary of Factor A: The Oregon chub has experienced extensive loss of slough and side-channel habitat due to hydrological changes resulting from dam construction and channelization in the Willamette Valley. However, many new habitats have been artificially created and are being managed to maintain populations of Oregon chub. Habitat quality is threatened by water quality degradation, though this has been documented at only a few sites. Habitat conditions have improved to the point where the species is not presently in danger of extinction. However, without continued protections provided by the Act, or long-term management agreements, the Oregon chub would likely become endangered in the foreseeable future due, in part, to the destruction, modification or curtailment of its habitat.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Overutilization was not a factor in listing nor is it currently known to be a threat to the Oregon chub.

Factor C. Disease or Predation

The proliferation of predatory nonnative fish is the largest current threat to Oregon chub populations (Scheerer *et al.* 2007, p. 14). Nearly half of the fish species found in the Willamette Basin are introduced; the basin contains 31 native fish species and 29 nonnative species (Hulse *et al.* 2002, p. 44). The large-scale alteration of the Willamette Basin's hydrologic system (*i.e.,* construction of dams and the resultant changes in flood frequency and intensity) has created conditions that favor nonnative predatory fishes, and reservoirs throughout the basin have become sources of continual nonnative fish invasions in the downstream reaches (Li *et al.* 1987, p. 198).

Oregon chub are most abundant at sites where nonnative fishes are absent (Scheerer 2007, p. 96). Predatory nonnative centrarchids (bass and sunfish) and *Ameiurus* spp. (bullhead catfish) are common in the off-channel habitats used by Oregon chub (Scheerer 2002, p. 1075). Sites with high connectivity to adjacent flowing water frequently contain nonnative predatory fishes and rarely contain Oregon chub (Scheerer 2007, p. 99). The presence of centrarchids and bullhead catfishes is probably preventing Oregon chub from recolonizing suitable habitats throughout the basin (Markle *et al.* 1991, p. 291).

Management for Oregon chub has focused on establishing secure, isolated habitats free of nonnative fishes. However, natural flood events may breach barriers to connectivity allowing invasion by nonnative fishes. During the 1996 floods in the Willamette Basin, nonnative fishes invaded the habitats of the two largest Oregon chub populations in the Santiam River; in the next 2 years, these populations declined by more than 50 percent, and had not recovered to pre-1996 levels more than 5 years later (Scheerer 2002, p. 1078).

Game fish have also been intentionally introduced into chub ponds. An illegal introduction of largemouth bass (*Micropterus salmoides*) at an Oregon chub population site on the Middle Fork apparently caused a significant decline in that population from over 7,000 fish to approximately 2,000 fish from 2000 to 2007 (Scheerer *et al.* 2007, p. 14). The ubiquity of nonnative fishes in the Willamette Basin has created a substantial challenge to the recovery of the Oregon chub. Scheerer *et al.* (2007, pp. 10–14) conclude, ''The resulting paradox is that the frequent interaction of the river with the floodplain habitats * * *, conditions which historically created off-channel habitats and aided in the dispersal of chub and the interchange of individuals among populations, now poses a threat to Oregon chub by allowing dispersal of nonnative species.''

Nonnative fishes may also serve as sources of parasites and diseases for the Oregon chub. However, disease and parasite problems have not been identified in this species, nor has the issue been studied.

Summary of Factor C: Predatory nonnative fishes are the greatest current threat to the recovery of the Oregon chub. Nonnative fishes are abundant and ubiquitous in the Willamette River Basin, and continual monitoring and management are required to protect existing Oregon chub populations from invasion. Predation remains a concern, but as the status of the species has improved since listing (*i.e.,* more populations have been established and are being managed to minimize threats), the relative effect of the threat of predatory nonnative fishes has declined. Nevertheless, predation continues to impact the Oregon chub such that it is likely to become endangered in the foreseeable future without continued protection under the Act.

Factor D. The Inadequacy of Existing Regulatory Mechanisms

Before the Oregon chub was federally listed as endangered in 1993, the species had no regulatory protections. Upon its listing as endangered, the species benefited from the protections of the Endangered Species Act, which include the prohibition against take and the requirement for interagency consultation for Federal actions that may affect the species. Section 9 of the Act and Federal regulations pursuant to section 4(d) of the Act prohibit the take of endangered and threatened species without special exemption. ''Take'' is defined as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (50 CFR 17.3). ''Harm'' is further defined to include 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; ''harass'' is defined as intentional or negligent actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Section 7(a)(1) of the Act requires all Federal agencies to utilize their authorities in furtherance of the purposes of the Act by carrying out programs for the conservation of endangered species and threatened species. Section 7(a)(2) of the Act requires Federal agencies to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of listed species or adversely modify their critical habitat. Thus, listing the Oregon chub provided a variety of protections, including the prohibition against take and the conservation mandates of section 7 for all Federal agencies. Because the Service has regulations that prohibit take of all threatened species (50 CFR 17.31(a)), unless modified by a special rule issued pursuant to section 4(d) of the Act (50 CFR 17.31(c)), the regulatory protections of the Act are largely the same for species listed as endangered and as threatened; thus, the protections provided by the Act will remain in place if the Oregon chub is reclassified as a threatened species.

The Oregon chub is designated as ''Sensitive-Critical'' by ODFW. This designation is a nonregulatory tool that

helps focus wildlife management and research activities, with the goal of preventing species from declining to the point of qualifying as ''threatened'' or ''endangered'' under the Oregon Endangered Species Act (ORS 496.171, 496.172, 496.176, 496.182 and 496.192). Sensitive-Critical designation encourages but does not require the implementation of any conservation actions for the species (*see* the discussion above under Additional Conservation Measures).

The Oregon chub is not protected by any other regulatory mechanisms.

Summary of Factor D: The regulatory mechanisms in effect under the Endangered Species Act provide a prohibition against take, the affirmative conservation mandate of section 7(a)(1), and the protection against jeopardy of section 7(a)(2); these regulatory mechanisms will remain in place if the Oregon chub is downlisted to threatened. A program of conservation actions will be implemented by the Corps, BPA, and BOR as a result of the Service's biological opinion on the Willamette Project. However, because there are no other regulatory mechanisms in place beyond the Act, the inadequacy of regulatory mechanisms still threatens the Oregon chub.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Almost half of all the fish species in the Willamette River are not native to the basin (Hulse *et al.* 2002, p. 44). Along with the direct threat of predation (*see* Factor C, above), nonnative fish compete with Oregon chub for food resources. Competition with nonnative fishes may contribute to the decline and exclusion of Oregon chub from suitable habitats. Observed feeding strategies and diet of nonnative fishes, particularly juvenile centrarchids and adult mosquitofish (*Gambusia affinis*) overlap with the diet and feeding strategies described for the Oregon chub (Li *et al.* 1987, pp. 197–198). Thus, direct competition for food between Oregon chub and nonnative species may limit the distribution and expansion of the species; however, no studies have focused on the topic of competitive exclusion to date.

Historically, floods provided the mechanism of dispersal and genetic exchange for Oregon chub populations throughout the Willamette Basin (Scheerer 2002, p. 1078). The current management focus on protecting Oregon chub populations in isolation, which protects the species from the introduction of predatory nonnative fishes, may be having negative genetic implications (Scheerer 2002, p. 1078). This lack of connectivity means that movement of individuals among populations occurs rarely, if at all, which results in little or no genetic exchange among populations (Scheerer *et al.* 2007, p. 9). Research is under way to determine if Oregon chub populations have distinct genetic characteristics in the different sub-basins of the Willamette River (Ardren *et al.* 2008, p. 1). There is concern that an unintended effect of managing for isolated populations may be genetic drift and inbreeding. If this proves to be the case, managers may need to move fish among populations to fulfill the role that natural flooding once played (Scheerer *et al.* 2007, p. 15).

Summary of Factor E: Competition from nonnative species and the loss of genetic diversity as a result of managing Oregon chub populations in isolated habitats are potential threats that could affect Oregon chub populations throughout the species' range. However, the magnitude of these threats is unknown.

Foreseeable Future

The term ''threatened species'' means any species (or subspecies or, for vertebrates, distinct population segments) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act does not define the term ''foreseeable future.'' For the purpose of this proposed rule, we defined the ''foreseeable future'' to be the extent to which, given the amount and substance of available data, we can anticipate events or effects, or reliably extrapolate threat trends, such that we reasonably believe that reliable predictions can be made concerning the future as it relates to the status of the species at issue.

In considering the foreseeable future as it relates to the status of the Oregon chub, we considered the threats to the Oregon chub, historical declines, and ongoing conservation efforts.

With respect to the Oregon chub, in the absence of the Act's regulatory protections, historical population declines, and range contraction, which were the result of habitat loss, predation by nonnative fishes, and the lack of sufficient regulatory mechanisms are expected to continue throughout the species' range. We have no information to suggest that the threats identified above are likely to be reduced in the foreseeable future, nor that regulatory mechanisms will materialize to address or ameliorate the ongoing threats to the species. Thus, future Oregon chub population declines and range contraction, similar to what has been observed in the past, is a reasonable expectation without continued protection under the Act.

Conclusion of 5-Factor Analysis

We have carefully assessed the best scientific and commercial data available and have determined that the Oregon chub is not currently in danger of extinction. We believe that the species now meets the definition of a threatened species throughout all of its range. It has exceeded two of the downlisting criteria and is on the brink of meeting the third. Recovery plans are intended to guide and measure recovery. Recovery criteria for downlisting and delisting are developed in the recovery planning process to provide measurable goals on the path to recovery; however, precise attainment of all recovery criteria is not a prerequisite for downlisting or delisting. Rather, the decision to revise the status of a listed species is based solely on the analysis of the 5 listing factors identified in section 4 of the Act. The Act provides for downlisting from endangered to threatened when the best available data indicates that a species, subspecies, or distinct population segment is no longer in danger of extinction.

At the time we completed the Recovery Plan for the Oregon Chub in 1998, we attempted to describe what the range, abundance, and distribution of Oregon chub populations should be before downlisting and delisting. These estimates were manifested in the downlisting and delisting criteria discussed above, and these criteria effectively established the Service's position on what constitutes ''threatened,'' in the case of downlisting criteria, and ''recovered,'' in the case of the delisting criteria. Because the downlisting criteria have not been precisely met, the proposed finding in this rule represents a departure from the Service's previously articulated description of ''threatened,'' and so must be further explained.

We compared current Oregon chub population information with the downlisting criteria for each sub-basin and estimated the amount by which each population goal's had been exceeded. The result of this comparison is shown in table 2.

TABLE 2—COMPARISON OF NUMERICAL POPULATION GOALS FOR DOWNLISTING FROM THE OREGON CHUB RECOVERY PLAN WITH CURRENT POPULATION ESTIMATES, BY SUB-BASIN

Sub-basin	Downlisting goal (number of fish/ number of populations)	Current population estimate (number of fish/number of populations)	Percent of downlisting goal achieved (number of fish/number of populations)
Santiam	1,500/3	5,640/8	376/267
Mainstem Willamette	1,500/3	78,727/13	5,248/433
Middle Fork Willamette	1,500/3	35,142/14	2,343/467

Although these totals do not incorporate the 5-year stable or increasing trend aspect of the downlisting criteria, the number of chub in these basins greatly exceeds the minimum required in the downlisting criteria for both the number of populations and the number of individual fish. Taken together, along with the 5-factor analyses discussed above, it is clear that the status of the chub is likely far more secure than it might be with 4,500 fish in 9 populations across 3 sub-basins with 5-year stable or increasing trends.

The number of populations has increased from 9 to 36 since the species was listed in 1993; there are 16 large (>500 individuals) populations with stable or increasing trends. The species is well distributed throughout the Willamette Basin, and most of these populations have some type of protective management and appear to be viable as long as they are monitored and adaptively managed. Although many of the threats have been reduced by recovery efforts, threatened status is appropriate because the species is likely to become endangered in the foreseeable future without the protections of the Act or long-term management agreements and adaptive management actions. In addition, concerns remain regarding the genetic implications of managing Oregon chub in isolated ponds, cut off from potential interactions with other populations in the basin.

Threats to existing habitats remain, including manipulation of flows which can lead to desiccation, nutrient and pesticide runoff, and vegetative succession in shallow pond environments. The chief threat to existing Oregon chub populations is nonnative fish invasions, which may occur as a result of flood events, intentional introductions, or through connections between isolated chub habitats and adjacent watercourses. However, as the status of the species has improved since listing (*i.e.,* more populations have been established and are being managed to minimize threats), the relative effect of the threat of predatory nonnative fishes has declined. Monitoring for nonnative fish invasions and adaptively managing in response to such invasions is necessary for the long-term viability of this species.

Significant Portion of the Range Analysis

Having determined that the Oregon chub is threatened throughout its range, we next considered whether it is in danger of extinction in any significant portions of its range.

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' The term ''significant portion of its range'' is not defined by statute. For purposes of this finding, a significant portion of a species' range is an area that is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species.

The first step in determining whether a species is threatened or endangered in a significant portion of its range is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and endangered. To identify only those portions that warrant further consideration, we determine whether there is substantial information indicating that: (1) The portions may be significant, and (2) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion warrants further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

If we identify any portions of a species' range that warrant further consideration, we then determine whether in fact the species is threatened or endangered in any significant portion of its range. Depending on the biology of the species, its range, and the threats it faces, it may be more efficient in some cases for the Service to address the significance question first, and in others the status question first. Thus, if the Service determines that a portion of the range is not significant, the Service need not determine whether the species is threatened or endangered there. If the Service determines that the species is not threatened or endangered in a portion of its range, the Service need not determine if that portion is significant. If the Service determines that both a portion of the range of a species is significant and the species is threatened or endangered there, the Service will specify that portion of the range where the species is in danger of extinction pursuant to section 4(c)(1) of the Act.

The terms ''resiliency,'' ''redundancy,'' and ''representation'' are intended to be indicators of the conservation value of portions of the species' range. Resiliency allows the species to recover from periodic disturbance. A species will likely be more resilient if large populations exist in high-quality habitat that is distributed throughout the range of the species in such a way as to capture the environmental variability within the range of the species. It is likely that the larger size of a population will help contribute to the viability of the species. Thus, a portion of the range of a species may make a meaningful contribution to the resiliency of the species if the area is relatively large and contains particularly high-quality habitat or if its location or characteristics make it less susceptible to certain threats than other

portions of the range. When evaluating whether or how a portion of the range contributes to resiliency of the species, it may help to evaluate the historical value of the portion and how frequently the portion is used by the species. In addition, the portion may contribute to resiliency for other reasons—for instance, it may contain an important concentration of certain types of habitat that are necessary for the species to carry out its life-history functions, such as breeding, feeding, migration, dispersal, or wintering.

Redundancy of populations may be needed to provide a margin of safety for the species to withstand catastrophic events. This does not mean that any portion that provides redundancy is a significant portion of the range of a species. The idea is to conserve enough areas of the range such that random perturbations in the system act on only a few populations. Therefore, each area must be examined based on whether that area provides an increment of redundancy that is important to the conservation of the species.

Adequate representation ensures that the species' adaptive capabilities are conserved. Specifically, the portion should be evaluated to see how it contributes to the genetic diversity of the species. The loss of genetic diversity may substantially reduce the ability of the species to respond and adapt to future environmental changes. A peripheral population may contribute meaningfully to representation if there is evidence that it provides genetic diversity due to its location on the margin of the species' habitat requirements.

Applying the process described above, we evaluated the range of the Oregon chub to determine if any units could be considered a significant portion of its range. A case could be made that each of the three sub-basins discussed in the recovery plan (Mainstem Willamette River, Middle Fork Willamette, and Santiam River) (U.S. Fish and Wildlife Service 1998, pp. 27–28) are significant portions of the range of the Oregon chub. As discussed above, a portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability to conserve the species. Each of the three sub-basins clearly meets these criteria, as described in the recovery plan (U.S. Fish and Wildlife Service 1998, pp. 27–28).

Next we must determine if the threats to the Oregon chub are nonuniformly distributed, such that populations in any of the sub-basins experience a higher level of threat than populations in any other sub-basin. The primary remaining threats to the species are introduction of predatory nonnative fishes into chub ponds and water quality degradation. Extensive surveys of the Willamette Basin have found that predatory nonnative fishes are abundant and widespread in each of the sub-basins (Scheerer 2007, p. 97). Threats to water quality, including chemical spills, agricultural runoff, and drought, are not restricted to any portion of the Oregon chub's range, and are equally likely to occur in any of the three sub-basins. The threats associated with reduced genetic exchange among populations are not yet well understood; it seems likely, however, that the potential genetic consequences of management for isolated populations (*e.g.,* inbreeding and genetic drift) could be experienced across the range of the species, since protection of isolated ponds is the management goal for populations in all three of the sub-basins.

In summary, the primary threats to the Oregon chub are relatively uniform throughout the species' range. We have determined that none of the existing or potential threats, either alone or in combination with others, currently place the Oregon chub in danger of extinction throughout all or a significant portion of its range. However, without the continued protections of the Act or long-term management agreements, the Oregon chub is likely to become endangered throughout its range in the foreseeable future. Threatened status is therefore appropriate for the Oregon chub throughout its entire range.

Effects of This Rule

If this proposed rule is made final, it would revise 50 CFR 17.11(h) to reclassify the Oregon chub from endangered to threatened on the List of Endangered and Threatened Wildlife. However, this reclassification does not significantly change the protection afforded this species under the Act. The regulatory protections of section 9 and section 7 of the Act (*see* Factor D, above) would remain in place. Anyone taking, attempting to take, or otherwise possessing Oregon chub, or parts thereof, in violation of section 9 is subject to a penalty under section 11 of the Act. Pursuant to section 7 of the Act, all Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Oregon chub. Whenever a species is listed as threatened, the Act allows promulgation of special rules under section 4(d) that modify the standard protections for threatened species found under section 9 of the Act and Service regulations at 50 CFR 17.31 and 17.71, when it is deemed necessary and advisable to provide for the conservation of the species. There are no 4(d) rules in place or proposed for the Oregon chub, because there is currently no conservation need to do so for the species. This reclassification would have no effect on the current proposal to designate critical habitat for the Oregon chub.

Peer Review

In accordance with our policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), and the Office of Management and Budget's Final Information Quality Bulletin for Peer Review, dated December 16, 2004, we will seek the expert opinions of at least three appropriate and independent specialists regarding the science in this proposed rule. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed downlisting. We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

Section 4(b)(5)(D) of the Act requires that we hold one public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register** (*see* **DATES**). Such requests must be made in writing and be addressed to the Field Supervisor at the address in the **FOR FURTHER INFORMATION CONTACT** section above.

Clarity of This Proposed Rule

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

(a) Be logically organized;

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

(c) Use clear language rather than jargon;

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

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one

of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Required Determinations

Paperwork Reduction Act of 1995

Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that Federal agencies obtain approval from OMB before collecting information from the public. This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein is available upon request from the Oregon Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT**).

Author

The primary authors of this document are Cat Brown and Doug Baus at the Oregon Fish and Wildlife Office in Portland, Oregon (*see* **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, we hereby propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by revising the entry for ''Chub, Oregon'' under FISHES in the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Chub, Oregon	*Oregonichthys crameri*	U.S.A. (OR)	Entire	T	520	NA	NA
*	*	*	*	*	*	*	

* * * * *

Dated: May 8, 2009.

Rowan W. Gould,

Acting Director, Fish and Wildlife Service.

[FR Doc. E9–11322 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 93
Friday, May 15, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 12, 2009.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Forest Service

Title: Grazing Permit Administration Forms.

OMB Control Number: 0596–0003.

Summary of Collection: Domestic livestock grazing occurs on approximately 90 million acres of National Forest Service (NFS) lands. This grazing is subject to authorization and administrative oversight by the Forest Service (FS). The information is required for the issuance and administration of grazing permits, including fee collections, on NFS lands as authorized by the Federal Land Policy and Management Act, as amended, and subsequent Secretary of Agriculture Regulation 5 U.S.C. 301, 36 CFR part 222, subparts A and C. The bills for collection of grazing fees are based on the number of domestic livestock grazed on national forest lands and are a direct result of issuance of the grazing permit. Information must be collected on an individual basis and is collected through the permit issuance and administration process. FS will collect information using several forms.

Need and Use of the Information: FS will collect information on the ownership or control of livestock and base ranch property and the need for additional grazing to round out year long ranching operations. FS uses the information collected in administering the grazing use program on NFS lands. If information were not collected it would be impossible for the agency to administer a grazing use program in accordance with the statutes and regulations.

Description of Respondents: Farms; Business or other for-profit; Individuals or households.

Number of Respondents: 5,400.

Frequency of Responses: Reporting: Annually; Other (as needed basis).

Total Burden Hours: 2,045.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–11171 Filed 5–14–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Fitzgerald Renewable Energy, LLC: Notice of Availability of an Environmental Assessment

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Availability of an Environmental Assessment for Public Review.

SUMMARY: The Rural Utilities Service (RUS) has prepared an Environmental Assessment (EA) to meet its responsibilities under the National Environmental Policy Act (NEPA) and 7 CFR part 1794, RUS Environmental Policies and Procedures related to possible financial assistance for a project proposed by Fitzgerald Renewable Energy, LLC (FRE), with headquarters in Winter Park, FL. The proposal consists of the construction of a 55 megawatt (MW) biomass fueled power plant located in Ben Hill County, Georgia on Peachtree Road. FRE is requesting that RUS provide financial assistance for the proposed project. RUS is considering funding this application, thereby making the proposal an undertaking subject to review under section 106 of the National Historic Preservation Act (NHPA), 16 U.S.C. 470(f), and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800).

DATES: Written comments on this Notice must be received on or before June 12, 2009.

ADDRESSES: To obtain copies of the EA or for further information, contact: Stephanie Strength, Environmental Protection Specialist, USDA, RUS, 1400 Independence Avenue, SW., Room 2244, Stop 1571, Washington, DC 20250–1571, or e-mail *stephanie.strength@wdc.usda.gov.* A copy of the EA may be viewed online at the Agency's Web site: *http://www.usda.gov/rus/water/ees/ea.htm,* at the Agency's address provided in this Notice, at Fitzgerald Renewable Energy, LLC, 152 Lincoln Avenue, Winter Park, FL 32789, and at the Fitzgerald/Ben Hill County Library, 123 North Main Street, Fitzgerald, GA 31750, Telephone: 229–426–5080. Comments should be submitted to Ms. Strength at the address provided in this Notice.

SUPPLEMENTARY INFORMATION: FRE proposes to construct a 55 MW biomass

fueled power plant on an approximately 60 acre site located on Peachtree Road near Fitzgerald, GA in Ben Hill County. The fuel will consist of biomass sources (primarily wood debris or residue from the regional forest products industry). It is anticipated that the facility would be in service in 2011.

A Notice of Intent to Prepare an EA and Hold a Scoping Meeting was published in the **Federal Register** at 74FR02510, on January 15, 2009, and *The Herald-Leader* on January 14, 2009. A public meeting was held on January 29, 2009, at the Grand Conference Center, 115 South Main Street in Fitzgerald, GA 31750. A summary of public comments can be found at the Agency Web site listed in this Notice.

As part of its environmental review process, RUS must take into account the effect of the proposal on historic properties in accordance with section 106 of the National Historic Preservation Act and its implementing regulation, ''Protection of Historic Properties'' (36 CFR part 800). Pursuant to 36 CFR 800.2(d)(3), RUS is using its procedures for public involvement under NEPA to meet is responsibilities to solicit and consider the views of the public during section 106 review. Accordingly, comments from the public submitted in response to scoping will inform RUS decision making in its section 106 review of the proposal. RUS has made the determination that no historic properties listed in or eligible for listing on the National Register of Historic Places (NRHP) will be affected by the Proposal.

Alternatives considered by RUS and FRE include (a) No action, (b) alternate sources of power, and (c) alternate sites. An environmental report that describes the proposal in detail and discusses its anticipated environmental impacts has been prepared by FRE. RUS has reviewed and accepted the document as its EA of the proposal. The EA is available for public review at the addresses provided in this Notice. Questions and comments should be sent to RUS at the mailing or e-mail addresses provided in this Notice. RUS should receive comments on the EA in writing by June 12, 2009 to ensure that they are considered in its environmental impact determination.

Should RUS, based on the EA of the proposal, determine that the impacts of the construction and operation of the proposal would not have a significant environmental impact, it will prepare a Finding of No Significant Impact. Public notification of a Finding of No Significant Impact would be published in the **Federal Register** and in newspapers with circulation in the proposal area.

Any final action by RUS related to the proposal will be subject to, and contingent upon, compliance with all relevant Federal, State and local environmental laws and regulations, and completion of the environmental review requirements as prescribed in RUS' Environmental Policies and Procedures (7 CFR part 1794).

Dated: May 7, 2009.

Mark S. Plank,

Director, Engineering and Environmental Staff, USDA/Rural Utilities Service.

[FR Doc. E9–11328 Filed 5–14–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Forest Service

Ravalli County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Ravalli County Resource Advisory Committee will be meeting to hold a short public forum (question and answer session). The meeting is being held pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 106–393) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393). The meeting is open to the public.

DATES: The meeting will be held on May 26, 2009, 6:30 p.m.

ADDRESSES: The meeting will be held at the Bitterroot National Forest Supervisor Office, Conference Room, 1801 North First Street, Hamilton, Montana. Send written comments to Dan Ritter, District Ranger, Stevensville Ranger District, 88 Main Street, Stevensville, MT 59870, by facsimile (406) 777–7423, or electronically to *dritter@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Daniel G. Ritter, Stevensville District Ranger and Designated Federal Officer, Phone: (406) 777–5461.

Dated: May 7, 2009.

Julie K. King,

Forest Supervisor.

[FR Doc. E9–11270 Filed 5–14–09; 8:45 am]

BILLING CODE M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Annual Survey of Local Government Finances (School Systems).

Form Number(s): F–33, F–33–I, F–33–L1, F–33–L2, F–33–L3.

OMB Control Number: 0607–0700.

Type of Request: Extension of a currently approved collection.

Burden Hours: 4,032.

Number of Respondents: 3,249.

Average Hours per Response: 1 hour and 15 minutes.

Needs and Uses: The U.S. Census Bureau requests an extension of the current expiration date of the Annual Survey of Local Government Finances (School Systems) to ensure accurate collection of information about public school finances.

The Census Bureau's collection of school district finance data and associated publications are the most comprehensive sources for pre-kindergarten through grade 12 finance data. The data are collected from the universe of school districts using uniform definitions and concepts of revenue, expenditure, debt, and assets. This effort is part of the Census Bureau's Annual Survey of Government Finance (OMB No. 0607–0585). Data collected from cities, counties, States, and special district governments are combined with data collected from local school systems to produce State and national totals of government spending. Local school system spending comprises a significant portion of total government spending. In 2006, public elementary-secondary expenditures accounted for nearly 30 percent of total local government spending.

This comprehensive, ongoing, time series collection of local education agency finances maintains historical continuity in the State and local government statistics community. In addition to the State and local government statistics historical significance, this collection of data has gained added importance within the area of education statistics since the reauthorization of the Elementary and Secondary Education Act (ESEA) by the No Child Left Behind Act (NCLB). The increased focus on schools has led to a demand for data reflecting student

performance, graduation rates, and school finance policy—all of which require the collection and use of this local education finance data collection. State legislatures, local leaders, university researchers, and parents increasingly rely on data to make substantive decisions about education. School district finance is a vital sector of the education data spectrum used by stakeholders to form policy and to develop new education strategies.

The education finance data collected and processed by the Census Bureau are an essential component of the government finances program and provide unique products for education and finance data user groups. The Bureau of Economic Analysis (BEA) uses most of the items on Form F–33 to develop figures for the Gross Domestic Product. Reported F–33 data items specifically contribute to the estimates for National Income and Product Accounts (NIPA), and the Input-Output accounts (I–O), and gross domestic investments. BEA also uses the data to assess other public fiscal spending trends and events.

The Census Bureau's government finances program has made possible the dissemination of comprehensive and comparable public fiscal data since 1902. School finance data, which comprise nearly 30 percent of all local government general expenditures, are currently incorporated into the local government statistics released in the Annual Survey of Government Finance. The Census Bureau expects to release school finance data as part of its 2007 Census of Governments products. This table package contains benchmark statistics on public revenue, expenditure, debt, and assets. They are widely used by economists, legislators, social and political scientists, and government administrators.

The Census Bureau makes available a detailed account for all school systems on files available from its Internet Web site. That Web site currently contains data files and statistical tables for the 1992 through 2006 fiscal year surveys. Historical files and publications prior to 1992 are also available upon request for data users engaged in longitudinal studies. In addition to numerous academic researchers who use the F–33 products, staff receive inquiries from State government officials, legislatures, public policy analysts, local school officials, non-profit organizations, and various Federal agencies.

The U.S. Department of Education's National Center for Education Statistics (NCES) jointly conducts this survey annually as part of the Common Core of Data (CCD) program. The education finance data collected by the Census Bureau are the sole source of school district fiscal information for the CCD. NCES data users utilize electronic tools to search CCD databases for detailed fiscal and non-fiscal variables. Additionally, the NCES uses the F–33 education finance files to publish annual reports on the state of education.

Affected Public: State, local or Tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or e-mail (*bharrisk@omb.eop.gov*).

Dated: May 12, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–11439 Filed 5–14–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–501]

Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Final Results of Antidumping Duty Administrative Review

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

SUMMARY: On February 9, 2009, the Department of Commerce (''the Department'') published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipe and tube (''welded pipe and tube'') from Turkey.[1] This review covers one producer/exporter of the subject merchandise.[2] The period of review (''POR'') is May 1, 2007, through April 30, 2008. Based on our analysis of the comments received, these final results differ from the preliminary results. The final results are listed below in the Final Results of Review section.

EFFECTIVE DATE: May 15, 2009.

FOR FURTHER INFORMATION CONTACT: Dennis McClure or Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5973 or (202) 482–4161, respectively.

SUPPLEMENTARY INFORMATION:

Background

This review covers the Borusan Group[3] (''Borusan''), a producer/exporter of the subject merchandise. On February 9, 2009, the Department published the preliminary results of this review and invited interested parties to comment on those results. On March 11, 2009, we received a case brief from Borusan. We did not receive a rebuttal brief from any interested parties.

Scope of the Order

The products covered by this order include circular welded non–alloy steel pipes and tubes, of circular cross-section, not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or galvanized, painted), or end finish (plain end, beveled end, threaded and coupled). Those pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load–bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing, or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon steel pipes and tubes within the

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[1] *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Preliminary Results of Antidumping Duty Administrative Review*, 74 FR 6368 (February 9, 2009).

[2] On February 17, 2009, the review was rescinded with respect to Toscelik Profil ve Sac Endustrisi A.S. *See Certain Welded Carbon Steel Pipe and Tube from Turkey: Notice of Rescission, in Part, of Antidumping Duty Administrative Review*, 74 FR 7394 (February 17, 2009).

[3] The Borusan Group includes Borusan Mannesmann Boru Sanayi ve Ticaret A.S. and Borusan Istikbal Ticaret T.A.S. and other affiliated companies.

physical description outlined above are included in the scope of this order, except for line pipe, oil country tubular goods, boiler tubing, cold–drawn or cold–rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Analysis of Comments Received

Interested parties made only one comment which related to an alleged ministerial error, which we address below. A separate Issues and Decision Memorandum has not been prepared for these final results.

Because the Department used the incorrect start and end dates for the POR, Borusan argues that the Department incorrectly dropped a large number of home market sales from the margin calculation. Borusan asserts that the Department should correct the start and end dates for the window periods in the margin calculation in order to match U.S. sales to contemporaneous sales in the home market. Citing to section 773(b)(1)(A) of the Tariff Act of 1930, as amended (''the Act''), Borusan contends that the Department needs to ensure that a proper cost test is applied to the home market sales so as to ensure a proper determination of whether home market sales have been made at less than cost of production ''over an extended period of time.''

We agree that the Department inadvertently used the incorrect dates as the start date and end date in our margin calculation. Therefore, we have corrected the dates to ensure that a proper cost test is applied to the home market sales. *See* Calculation Memorandum for the Borusan Group, from Dennis McClure to James Terpstra, dated June 9, 2009.

Fair Value Comparisons

We calculated export price (''EP'') and normal value (''NV'') based on the same methodology used in the preliminary results, except as noted in the Analysis of Comments Received section above.

Cost of Production

We calculated the cost of production for the merchandise based on the same methodology used in the preliminary results.

Final Results of Review

As a result of our review, we determine that the following weighted–average margin exists for the period May 1, 2007, through April 30, 2008.

Manufacturer/Exporter	Weighted–Average Margin
Borusan[4]	7.59 percent

[4] The cash deposit rate calculated for Borusan applies to The Borusan Group, Borusan Mannesmann Boru Sanayi ve Ticaret, A.S. and Borusan Istikbal Ticaret T.A.S. for CBP purposes. The Department formerly referred to Borusan Istikbal Ticaret T.A.S. as Istikbal Ticaret T.A.S. *See Notice of Final Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 70 FR 73447 (December 12, 2005). We note that Borusan's response does not identify a company by the name Istikbal Ticaret T.A.S. Instead, Borusan's response identified their affiliate, Borusan Istikbal Ticaret T.A.S., which was not involved in sales of subject merchandise to the United States during the POR. See Borusan's August 29, 2008, response at 33. Borusan also explained in its August 29, 2008, response at 5, that Borusan Birlesik Boru Fabrikalari San ve Tic. (''BBBF'') was renamed Borusan Mannesmann Boru Sanayi Ve Ticaret, A.S. prior to BBBF's name change.

Assessment

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Act, and 19 CFR 351.212(b). The Department calculated importer–specific duty assessment rates based on the ratio of the total antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above de minimis, we will instruct CBP to assess duties on all entries of subject merchandise by that importer. The Department intends to issue assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (''*Assessment Policy Notice*''). This clarification will apply to entries of subject merchandise during the POR produced by Borusan for which Borusan did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for the intermediary involved in the transaction. *See Assessment Policy Notice* for a full discussion of this clarification.

Cash Deposit Requirements

The following antidumping duty deposit rates will be effective upon publication of this notice of final results of the administrative review for all shipments of welded pipe and tube from Turkey entered, or withdrawn from warehouse, for consumption on or after the date of the publication of these final results, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for Borusan is 7.59 percent; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company–specific rate published for the most recent final results in which that manufacturer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original less–than-fair–value (''LTFV'') investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent final results for the manufacturer of the merchandise; and, (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 14.74 percent, the all–others rate established in the LTFV investigation. *See Antidumping Duty Order; Welded Carbon Steel Standard Pipe and Tube Products From Turkey*, 51 FR 17784 (May 15, 1986). These cash deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement may result in the Secretary's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping and/or countervailing duties.

Administrative Protective Order

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written

notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–11419 Filed 5–14–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–817]

Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement in the Antidumping Duty Order

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

SUMMARY: On December 30, 2008, the Department of Commerce (''the Department'') published the preliminary results of the changed circumstances review and intent to reinstate Sahaviriya Steel Industries Public Company Limited (''SSI'') in the antidumping duty order (''the order'') on certain hot–rolled carbon steel flat products (''hot–rolled steel'') from the Kingdom of Thailand (''Thailand''). *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Preliminary Results of Changed Circumstances Review and Intent To Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order*, 73 FR 79809 (December 30, 2008) (''*Preliminary Results*''). On October 29, 2008, we extended the time limit for completion of this changed circumstances review until April 22, 2009. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 64303 (October 29, 2008) (''*First Extension Notice*''). On April 29, 2009, we extended the date for the final results of this review by 15 days. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Extension of Time Limit for Final Results of Changed Circumstances Review*, 74 FR 19524 (April 29, 2009).This review covers subject merchandise manufactured and exported by SSI. The product covered by this order is hot–rolled steel from Thailand (*see* ''Scope of the Order'' section below). The period of review (''POR'') is July 1, 2006, through June 30, 2007. Based on our analysis of the comments received, we have made changes to the margin calculation. Therefore, the final results differ from the preliminary results. However, we continue to determine that SSI sold subject merchandise at less than normal value (''NV'') during the POR, and hereby reinstate SSI in the order. The final weighted–average dumping margin is listed below in the section entitled ''Final Results of Review.''

EFFECTIVE DATE: May 15, 2009.

FOR FURTHER INFORMATION CONTACT: John K. Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 2008, the Department published in the **Federal Register** the preliminary results of this changed circumstances review and intent to reinstate SSI in the antidumping order on hot–rolled steel from Thailand. *See Preliminary Results*. This review covers sales of subject merchandise by SSI. The POR is July 1, 2006, through June 30, 2007.

On December 10, 2008, we issued a notice correcting an error in the First Extension Notice. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Correction to Notice of Extension of Time Limit for Final Results of Changed Circumstances Review*, 73 FR 75079 (December 10, 2008). On February 5, 2009, the Department issued a notice correcting an error in the Preliminary Results. *See Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Correction to Preliminary Results of Changed Circumstances Review and Intent To Reinstate Sahaviriya Steel Industries Public Company Limited in the Antidumping Duty Order*, 74 FR 6136 (February 5, 2009).

We invited interested parties to comment on the preliminary results of review. On February 4, 2009, we received comments from SSI, U.S. Steel Corporation (''petitioner''), and interested party Nucor Corporation (''Nucor''). On February 11, 2009, SSI, petitioner and Nucor filed rebuttal comments. At the request of SSI, we held a hearing on this changed circumstances review on February 19, 2009. The Department has conducted this changed circumstances review in accordance with section 751(b) of the Tariff Act of 1930, as amended (''the Act'').

Scope of the Order

For purposes of the order, the products covered are certain hot–rolled carbon steel flat products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non–metallic substances, in coils (whether or not in successively superimposed layers), regardless of thickness, and in straight lengths, of a thickness of less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat–rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm, but not exceeding 1250 mm, and of a thickness of not less than 4.0 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of the order.

Specifically included within the scope of the order are vacuum degassed, fully stabilized (commonly referred to as interstitial–free (''IF'')) steels, high strength low alloy (''HSLA'') steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro–alloying levels of elements such as titanium or niobium (also commonly referred to as columbium), or both, added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro–alloying levels of elements such as chromium, copper, niobium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro–alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of the order, regardless of definitions in the Harmonized Tariff Schedule of the United States (''HTSUS''), are products in which: i) iron predominates, by weight, over each of the other contained elements; ii) the carbon content is 2 percent or less, by weight; and iii) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
2.25 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or

1.25 percent of nickel, or
0.30 percent of tungsten, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of the order unless otherwise excluded.

The following products, by way of example, are outside or specifically excluded from the scope of the order:

-Alloy hot–rolled steel products in which at least one of the chemical elements exceeds those listed above (including, *e.g.*, American Society for Testing and Materials (''ASTM'') specifications A543, A387, A514, A517, A506).

-Society of Automotive Engineers (''SAE'')/American Iron & Steel Institute (''AISI'') grades of series 2300 and higher.

-Ball bearing steels, as defined in the HTSUS.

-Tool steels, as defined in the HTSUS.

-Silico–manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 2.25 percent.

-ASTM specifications A710 and A736.

-USS abrasion–resistant steels (USS AR 400, USS AR 500).

-All products (proprietary or otherwise) based on an alloy ASTM specification (sample specifications: ASTM A506, A507).

-Non–rectangular shapes, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS.

The merchandise subject to the order is currently classified in the HTSUS at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, and 7211.19.75.90.

Certain hot–rolled carbon steel flat products covered by the order, including: vacuum degassed fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.01.80. Subject merchandise may also enter under 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7212.40.10.00, 7212.40.50.00, and 7212.50.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs submitted by SSI, petitioner, and Nucor are addressed in the ''Issues and Decision Memorandum'' (''Decision Memorandum'') from John M. Andersen, Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, dated May 7, 2009, which is adopted by this notice. A list of issues which parties have raised is in the Decision Memorandum and is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum which is on file in the Central Records Unit, Room 1117, of the main Commerce Building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at http://www.ia.ita.doc.gov/frn. The paper copy and the electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of the comments received, we have made certain changes to the margin calculations. These changes are discussed in the relevant sections of the Decision Memorandum and the Memorandum to the File from John K. Drury, Analysis Memorandum for the Final Results of Changed Circumstances Review of Certain Hot–Rolled Carbon Steel Flat Products from Thailand: Sahaviriya Steel Industries Public Co., Ltd. (''SSI''), dated May 7, 2009, (''Analysis Memorandum''). Specifically, for these final results:

1) We adjusted the reported warranty expenses dividing the sum of three years of warranty expenses by the sum of total sales during the same three-year period. We multiplied the result by the gross unit price and applied the result to all home market sales.
2) We have used SSI's reported cost of goods sold, rather than the cost adjusted for cost of manufacture.
3) We corrected a clerical error in the arm's–length portion of the Department's SAS program.

Final Results of Review

We determine that the following weighted–average margin percentage exists for the period July 1, 2006, through June 30, 2007:

Manufacturer / Exporter	Margin
Sahaviriya Steel Industries Public Company Limited	9.04 percent

Since we have established that hot–rolled steel from Thailand manufactured and exported by SSI is being sold at less than NV, SSI is hereby reinstated in the antidumping duty order effective upon the publication date of this notice. We will advise U.S. Customs and Border Protection to collect a cash deposit equal to the margin listed above on all entries of the subject merchandise produced by SSI that are entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results. This requirement shall remain in effect until publication of the final results of the next administrative review as to SSI. There are no changes to the rates applicable to any other companies under this antidumping duty order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with the final results of review within five days of the date of publication of this notice in accordance with 19 C.F.R. 351.224(b).

This notice also serves as a reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/disposition of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with section 751(b)(1) of the Act and 19 CFR 351.216.

Dated: May 7, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix Comments in Decision Memo

1. The Department's Authority to Conduct the Changed Circumstances Review
2. Date of Sale for U.S. Sales
3. Segment Methodology
4. Warranty Expenses
5. Affiliated Transportation Expenses
6. Use of Cost of Goods Sold
7. General and Administrative (''G&A'') and Financial Expense Ratio Denominators
8. G&A Expense Ratio
9. Affiliated Party Inputs
10. Direct Materials Cost
11. Clerical Error

[FR Doc. E9–11420 Filed 5–14–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology; Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on June 17, 2009. The Board of Overseers is composed of eleven members prominent in the fields of quality, innovation, and performance excellence and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Baldrige Program Strategic Plan, Initiation of Two Contracts, and Baldrige Collaborative and ''Trifecta'' (Baldrige Program, Baldrige Foundation, and the Alliance for Performance Excellence) Activities.

DATES: The meeting will convene June 17, 2009, at 8:30 a.m. and adjourn at 3 p.m. on June 17, 2009.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room B, Gaithersburg, Maryland 20899. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Diane Harrison no later than Tuesday, June 16, 2009, and she will provide you with instructions for admittance. Ms. Harrison's e-mail address is *diane.harrison@nist.gov* and her phone number is (301) 975–2361.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 12, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–11408 Filed 5–14–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, June 9, 2009, from 8:30 a.m. to 5 p.m. and Wednesday, June 10, 2009, from 8:30 a.m. to 11:45 a.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The theme for this meeting is ''NIST's Laboratory Programs and their Importance to Documentary Standards Development and Implementation'' with two case studies in Smart Grid and Health Care Information Technology (IT). The first day's agenda will include an update on NIST; overviews of the NIST role in documentary standards, Smart Grid, and Health Care IT; presentations on the importance of NIST laboratory research programs to support standards for Smart Grid and Health Care IT; external perspectives from two guest speakers on the issues and challenges associated with these two areas; and a related laboratory tour and software demonstration. On the second day, the agenda calls for a discussion with the Committee on three key questions related to the theme of the meeting followed by the VCAT's feedback on summary findings for the 2009 Annual Report. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *http://www.nist.gov/director/vcat/agenda.htm*.

DATES: The meeting will convene on June 9, 2009 at 8:30 a.m. and will adjourn on June 10, 2009, at 11:45 a.m.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Denise Herbert no later than Friday, June 5, 2009, and she will provide you with instructions for admittance. Ms. Herbert's e-mail address is *denise.herbert@nist.gov* and her phone number is (301) 975–5607.

FOR FURTHER INFORMATION CONTACT: Denise Herbert, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1000, telephone number (301) 975–5607.

Dated: May 12, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–11399 Filed 5–14–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Hydrographic Services Review Panel Meeting

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice of public open meeting (via conference call).

SUMMARY: The Hydrographic Services Review Panel (HSRP) was established

by the Secretary of Commerce to advise the Under Secretary of Commerce for Oceans and Atmosphere on matters related to the responsibilities and authorities set forth in section 303 of the Hydrographic Services Improvement Act of 1998, its amendments, and such other appropriate matters that the Under Secretary refers to the Panel for review and advice.

The purpose of the conference call is to allow Panel members to deliberate and vote on recommendations related to topics that were presented during a public meeting in Baltimore, Maryland, on April 14–15, 2009. Written public comments should be submitted to Captain Steven Barnum, Designated Federal Officer (DFO), by May 29, 2009.

Date and Time: The conference call will convene at 2 p.m. Eastern Daylight Time, June 8, 2009, and end by 3 p.m., if not earlier.

Public Participation: The meeting will be open to the public, with conference connection information below. It is recommended that interested public call in at 2 p.m. when the meeting starts because there is not a fixed time for public comment. The HSRP Chair will ask at large if there are any comments or questions from the public after the Panel discusses recommendations from the April 14–15, 2009 meeting. A final vote on recommendations will follow before the meeting ends.

FOR FURTHER INFORMATION CONTACT: Captain Steven Barnum, NOAA, Designated Federal Official (DFO), Office of Coast Survey, National Ocean Service (NOS), NOAA (N/CS), 1315 East West Highway, Silver Spring, Maryland 20910; Telephone: 301–713–2770, Fax: 301–713–4019; e-mail: *Hydroservices.panel@noaa.gov* or visit the NOAA HSRP Web site at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrp.htm*.

SUPPLEMENTARY INFORMATION: This conference call is available to the public through the following, toll free call-in number: (800) 799–9311 participant passcode: HSRP. Interested members of the public may call this number and listen to the meeting, and provide comment or ask questions when the HSRP Chair announces the Public Comment Period. Persons with hearing impairments may follow the proceedings by calling the Federal Relay Service [TTY (800) 877–8339, Voice (866) 377–8642 or Voice Carry-Over (877) 877–6280] and provide the Service with the conference call number and participant passcode. Be sure to notify the operator that it is a ''Conference Call'' before you provide call number and participant passcode.

Matters to be Considered: The Panel will deliberate and vote on recommendations to be presented to NOAA for improving NOAA's Hydrographic Services. Topic areas include: efficiency and coordination of national hydrographic survey standards and datums; appropriate funding and resources to ensure long-term success of restoration efforts; expansion of full Federal funding of the PORTS® program; continued improvements to the Integrated Ocean Observing System (IOOS); non-traditional supporters of NOAA's Hydrographic Services; and economic stimulus funding opportunities for hydrographic services and functions, including private contracting. Draft recommendations can be viewed at *http://nauticalcharts.noaa.gov/ocs/hsrp/hsrpt.htm*, or upon request from the DFO.

Dated: May 7, 2009.

Steven R. Barnum,

NOAA, Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. E9–11394 Filed 5–14–09; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Proposal for Changes to the Format of Annual Reports Submitted to the Foreign-Trade Zones Board

SUMMARY: The Foreign-Trade Zones (FTZ) Board is inviting public comment on a staff proposal to revise the format of annual reports that are submitted by zone grantees to the Foreign-Trade Zones Board. The revisions are intended to clarify the information that is being requested and focus on the information that is most important for oversight of the FTZ program. For comparison, the current format for annual reports is available on the FTZ Board's Web site—accessible via *http://www.trade.gov/ftz*—within the ''Already in a Zone?'' section. Relative to the current format, a number of multiple-part questions have been broken out into separate questions for purposes of clarity and ease of use. In general, the amount of information being requested in the proposed format is reduced relative to the existing format.

Part 1: Zone Project Summary

1. Was foreign-status merchandise stored within the zone under zone procedures during the fiscal year?

If the answer is no, complete questions 2–3 below:

2. Describe the promotion and marketing efforts that are being undertaken to provide local companies with information on using the zone?

3. Has the zone ever been used for the admission and storage of zone status merchandise? If yes, indicate when.

If the answer is yes, complete questions 4–12 of Part 1 below for all warehouse and distribution operations within the general-purpose zone and any subzones. In addition, for *each* general-purpose zone (GPZ) or subzone operation involved in manufacturing/processing, complete a separate Part 2 (Manufacturing/Processing GPZ and Subzone Operations).

4. Provide a summary of the warehouse and distribution activity that occurred within the zone project. Specifically discuss any developments or trends in shipments or activity and any value added activity that occurred within active zone space.

5. Discuss how the zone project contributes to the local economy and local economic development efforts, including the FTZ impact on local employment, port activity, industrial development, international trade and investment. If applicable, describe in what ways the zone has been used locally by the logistics industry and other companies to address supply chain issues.

6. The general-purpose zone served ___ zone users during the fiscal year. The number employed by zone users within activated general-purpose zone areas was ___ persons. Employment figures should include both direct and contract persons. For part time workers, please report a full time equivalent (*e.g.,* 60 contract employees working for 6 months would equal a full time equivalent of 30 workers).

7. Activity Summary:

Provide a list of general-purpose zone sites and indicate the number of acres that are activated at each site. Also indicate if the site is subject to a time or sunset limit.

Provide a list of approved subzones and indicate the activation status of each subzone. If the subzone is active, provide the employment (direct + contract) for the subzone. If inactive, indicate if the subzone has lapsed.

8. Movement of Merchandise:

This section should include the movement of merchandise for all general-purpose and subzone operations that did *not* require FTZ Board manufacturing/processing authority. (There is a separate section below where manufacturing/processing operations that occurred within the general-purpose zone or any subzone will be reported individually.)

Zone reports should reflect only activity within activated portions of zones/subzones. Foreign and domestic merchandise handled within activated FTZ areas should be reported.

MERCHANDISE IN THE ZONE AT BEGINNING AND END OF FISCAL YEAR

	Beginning value ($)	End value ($)
Domestic Status Foreign Status.	..... 	.....
Total:	.....	.....

Merchandise received	Value ($)
Domestic Status ..... Foreign Status. From Other U.S. FTZ's:. Domestic Status. Foreign Status.	
Total:	

Merchandise forwarded	Value ($)
To the U.S. Market ... To Foreign Countries (Exports). To Other U.S. FTZ's.	
Total:	

Merchandise destroyed: $

Explanation of Discrepancies:

a. Does Beginning Inventory + Total Merchandise Received − Total Merchandise Forwarded − Merchandise Destroyed = Ending Inventory? If not, explain.

b. Is the level of Merchandise Received this year significantly different from the previous year? If yes, explain.

c. Is the Ending Inventory from the previous year equal to the Beginning Inventory for this year?

9. *Main Categories of Foreign Status Merchandise Received (Top Five)*

Category	Value ($)	Main countries of origin
....	....	
Total:	.....	

10. *Foreign Status Merchandise Received:*

Nonprivileged Foreign $

Privileged Foreign $___.

11. Customs duties collected on merchandise entered from the zone during the fiscal year amounted to $___.

12. (Optional) Attachment field: You may attach any photographs of the zone or any information you feel may be useful.

Part 2: Manufacturing/Processing GPZ and Subzone Operators

A separate Part 2, questions 2—17 should be included for each manufacturing/processing operation that occurred within the general-purpose zone or any subzone. This reporting of manufacturing/processing applies to any activity requiring FTZ Board approval under the Board's regulations (15 CFR part 400). (Note that any oil refinery operations should use the oil refinery-specific Part 2 that follows this section.)

Zone reports should reflect only activity within activated portions of zones/subzones. Foreign and domestic merchandise handled within activated FTZ areas should be reported.

1. The grantee shall provide a list of each FTZ Board approved manufacturing/processing operation within the general-purpose zone or subzones, and indicate whether or not activity was conducted under zone procedures at each operation during the fiscal year. Note that separate information for questions 2–17 below is required for each active manufacturing/processing operation.

2. Site/Subzone Number.

3. Company Name.

4. Activated Acres.

5. Briefly describe the activity at the subzone/GPZ operation that is occurring under zone procedures. Have there been any changes to the activity or facilities within the past year?

6. Provide the current year's level of production _____ and the level of production approved by the FTZ Board _____.

7. Employment within the FTZ operation.

8. Is the current activity consistent with the plan that was presented to and approved by the FTZ Board (this includes the level of savings, the components that are imported and the finished products). Explain how the activity is consistent.

9. Provide an estimate for the value-added activity that takes place under zone procedures (labor, profit, overhead, etc.). One way to estimate value-added is: Value of Sales from Plant minus Value of merchandise Received at Plant. Value-added should not be included in the Movement of Merchandise figures below.

10. Explain the extent to which FTZ status has helped your facility compete with plants abroad (this includes competition with other company facilities located abroad to expand or maintain product lines in the U.S.).

11. If the manufacturing activity is subject to restriction, list the restriction(s) and describe the method of compliance.

12. Movement of Merchandise:

MERCHANDISE IN THE ZONE AT BEGINNING AND END OF FISCAL YEAR

	Beginning value ($)	End value ($)
Domestic Status ..... Foreign Status *Total:*	....	

Merchandise received	Value ($)
Domestic Status	
Foreign Status.	
From Other U.S. FTZ's:.	
Domestic Status.	
Foreign Status	
Total:	

Merchandise Forwarded	Value ($)
To The U.S. Market ..	
To Foreign Countries (Exports).	
To Other U.S. FTZ's.	
Total:	

Merchandise destroyed: $

Explanation of Discrepancies:

a. Does Beginning Inventory + Total Merchandise Received – Total Merchandise Forwarded – Merchandise Destroyed = Ending Inventory? If not, explain.

b. Is the level of Merchandise Received this year significantly different from the previous year? If yes, explain.

c. Is the Ending Inventory from the previous year equal to the Beginning Inventory for this year?

13. *Main Categories of Foreign Status Merchandise Received (Top Five)*

Category	Value ($)	Main countries of origin
.....	.....	
.....	.....	
.....	.....	
.....	.....	
.....	.....	
Total:	.....	

14. *Main Categories of Merchandise Forwarded (Top Five)*

Category	Value ($)
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
Total:	.....

15. *Foreign Status Merchandise Received:*

Nonprivileged Foreign $

Privileged Foreign $

16. Customs duties collected on merchandise entered into U.S. Customs territory from the operation during the fiscal year amounted to $_____.

17. (Optional) Attachment field: You may attach any photographs of the operation or any information you feel may be useful.

Part 2 for Oil Refinery Operators

Zone reports should reflect only activity within activated portions of zones/subzones.

Foreign and domestic merchandise handled within activated FTZ areas should be reported.

1. The grantee shall provide a list of each FTZ Board approved oil refinery operation within the general-purpose zone or subzones, and indicate whether or not activity was conducted under zone procedures at the subzone or GPZ site during the fiscal year. Note that separate information for questions 2–36 below is required for each active oil refinery operator.

2. Site/Subzone Number.

3. Company Name.

4. Activated Acres.

5. Activation Date.

6. Number of tanks/storage capacity in barrels.

7. Employment—direct and indirect (including contract employees).

8. List primary non-crude receipts on an average daily basis.

9. What percent of the primary non-crude receipts are sourced from abroad?

10. List primary non-NPF attributed products (fuels, lubricants, etc.).

11. The primary non-NPF attributed products account for _____% of total output.

12. Provide a description of types of customers for non-NPF products shipped from the refinery. In describing customers, do not provide customer names or specific customer information. We are seeking general information about general types or categories of customers by industry and/or by use.

13. Identify exports by product and volume.

14. List primary products produced from NPF attributed feedstocks.

15. NPF attributed products account for _____% of total output.

16. Provide a description of types of customers for petrochemical products.

17. Indicate approximate percentage of shipments that are to affiliated plants.

18. Percent of total production directly exported.

19. Percent of total production indirectly exported (if known).

20. Current rated crude distillation capacity (BPD).

21. Volume of total crude oil receipts on an average daily basis (BPD).

22. Volume of foreign crude oil receipts on an average daily basis (BPD).

23. Estimated percentage of foreign crude receipts under 25 degrees API.

24. Provide the number and date of the most recent Board Order.

25. What capacity (BPD or BPD equivalent) was approved by the Board in the above order? Grants of authority are approved for a given level of activity. In the case of oil refineries, the levels of activity are stated in terms of current rated crude distillation capacity. A plant may increase its capacity, but the level of approved zone activity for the plant remains at the level approved under the refinery's current Board Order. Significant increases in activity above Board-approved levels require an expanded authorization.

26. Is the refinery operating within the approved scope of authority? Explain.

27. Indicate how zone savings assist the company in its international competitiveness efforts (*e.g.,* reduce operating costs, improve margins, help make exports more competitive, maintain or increase refinery capacity through processing unit upgrades or additions at U.S. refinery versus foreign refinery in a global industry).

In describing how FTZ status has affected the refinery, please give examples and anecdotal information that you feel relevant. We recognize that FTZ status may be only a contributing factor.

28. Current estimate of annual zone duty savings.

29. Describe public-type benefits (both direct and indirect) to the local and national economy. Please give specific examples. As it applies to your plant, you may describe with any or all of the following:

a. Affected domestic production employment and refinery capacity.

b. Helped to offset environmental compliance costs.

c. Helped to preserve U.S. refining capacity.

d. Contributed to increased investment in U.S. refining.

In describing industry impact, information may be presented to the FTZ Board on a company-wide or industry-wide basis (rather than from individual refineries). In this manner the accumulated impact of all of a company's facilities or the use of zone procedures in the industry as a whole may be discussed rather than on an individual basis.

30. If the operation is subject to restriction, please describe method of compliance.

31. *Movement of Merchandise*

MERCHANDISE IN THE ZONE AT BEGINNING AND END OF FISCAL YEAR

	Beginning value ($)	End value ($)
Domestic Status ..... Foreign Status.	.....	
Total:	.....	

Merchandise received	Value ($)
Domestic Status ..... Foreign Status. From Other U.S. FTZ's:. Domestic Status. Foreign Status. *Total:*	

Merchandise forwarded	Value ($)
To The U.S. Market .. To Foreign Countries (Exports). To Other U.S. FTZ's.	
Total:	

Merchandise destroyed: $

Explanation of Discrepancies:

a. Does Beginning Inventory + Total Merchandise Received − Total Merchandise Forwarded − Merchandise Destroyed = Ending Inventory? If not, explain.

b. Is the level of Merchandise Received this year significantly different from the previous year? If yes, explain.

c. Is the Ending Inventory from the previous year equal to the Beginning Inventory for this year?

32. *Main Categories of Foreign Status Merchandise Received (Top Five)*

Category	Value ($)	Main countries of origin
.....	.....	
.....	.....	
.....	.....	
.....	.....	
.....	.....	
Total:	.....	

33. *Main Categories of Merchandise Forwarded (Top Five)*

Category	Value
.....	.....
.....	.....
.....	.....
.....	.....
.....	.....
Total:	.....

34. *Foreign Status Merchandise Received:*

Nonprivileged Foreign $

Privileged Foreign $

35. Customs duties collected on merchandise entered into U.S. Customs territory from the operation during the fiscal year amounted to $_____.

36. (Optional) Attachment field: You may attach any photographs of the operation or any information you feel may be useful.

Public comment on this proposal is invited from interested parties. We ask that parties fax a copy of their comments, addressed to the Board's Executive Secretary, to (202) 482–0002 or e-mail comments to *ftz@ita.doc.gov.* We also ask that parties submit the original of their comments to the Board's Executive Secretary at the following address: U.S. Department of Commerce, Room 2111, 1401 Constitution Ave. NW., Washington, DC 20230. The closing period for the receipt of public comments is July 14, 2009. Any questions about this proposal should be directed to Elizabeth Whiteman at *Elizabeth_Whiteman@ita.doc.gov* or (202) 482–0473.

Dated: May 8, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–11421 Filed 5–14–09; 8:45 am]

BILLING CODE P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must Be Received On or Before: 6/15/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703)

603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

Soy Candles, Assorted Scents, Glass Jar Container
NSN: MR 489—9.4 oz Vanilla
NSN: MR 490—9.4 oz Berry Blaster
NSN: MR 491—9.4 oz Ocean
NSN: MR 492—9.4 oz Lily
NSN: MR 493—3.7 oz Vanilla
NSN: MR 494—3.7 oz Berry Blaster
NSN: MR 495—3.7 oz Ocean
NSN: MR 496—3.7 oz Lily
NPA: Industries for the Blind, Inc., West Allis, WI
Contracting Activity: Military Resale—Defense Commissary Agency, Fort Lee, VA

Services

Service Type/Locations: Custodial Services
J. Caleb Boggs Courthouse & Federal Building, 844 N. King Street, Wilmington, DE
J. Allen Frear Federal Building, 300 South New Street, Dover, DE
Bridgeton SSA Office, 149 West Broad Street, Bridgeton, NJ
NPA: Opportunity Center, Incorporated, Wilmington, DE
Contracting Activity: Public Buildings Service, GSA/PBS/R03 Philatlantic, Philadelphia, PA

Service Type/Location: Relamping of Lighting Fixtures
Naval Hospital Bremerton: 1 Boone Road, Bremerton, WA
NPA: Skookum Educational Programs, Bremerton, WA
Contracting Activity: Dept. of the Navy, Engineering Field Activity, Poulsbo, WA

Service Type/Location: Custodial Service
Camp Bullis Buildings 6282 and 6287, 6929 Camp Bullis Rd., Camp Bullis, TX
NPA: Professional Contract Services, Inc., Austin, TX
Contracting Activity: Dept. of the Army, XR W6BB ACA Sam Houston, Fort Sam Houston, TX

Service Type/Location: Grounds Maintenance Services
U.S. Forest Service Northern CA Service Center, 6101 Airport Road, Redding, CA
NPA: Shasta County Opportunity Center, Redding, CA
Contracting Activity: Forest Service, North Zone Fire Cache, Redding, CA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. E9–11311 Filed 5–14–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List: Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

DATES: *Effective Date:* 6/15/2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 3/20/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (74 FR No. 53, pgs. 11905–11906) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and impact of the addition on the current or most recent contractors, the Committee has determined that the product listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product to the Government.

2. The action will result in authorizing small entities to furnish the product to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product is added to the Procurement List:

Product

NSN: 7520–01–441–9130—Kit, Fingerprint
NPA: The Arbor School, Houston, TX
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP Ctr—Office Equipment, New York, NY
Coverage: B–List for the broad Government requirement as aggregated by the General Services Administration.

Deletions

On 3/20/2009 and 3/27/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (74 FR No. 53, pgs. 11905–11907 and 74 FR No. 58, pgs. 13413–13414, respectively) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products

NSN: 7520–01–557–3151—Antimicrobial, Black Ink
NSN: 7520–01–557–3154—Antimicrobial, Blue Ink
NPA: Alphapointe Association for the Blind, Kansas City, MO
Contracting Activity: GSA/FSS OFC SUP Ctr—Paper Products, New York, NY

NSN: 7045–01–483–7833—CD Access File
NPA: Wiscraft Inc.—Wisconsin Enterprises for the Blind, Milwaukee, WI
Contracting Activity: GSA/FSS OFC SUP Ctr—Paper Products, New York, NY

NSN: 7510–01–537–7841—DAYMAX, IE/LE Month at a View, 2008, 3-hole
NSN: 7510–01–537–7847—DAYMAX, IE/LE Week at a View, 2008, 3-hole
NSN: 7510–01–537–7850—DAYMAX, IE/LE Day at a View, 2008, 3-hole
NSN: 7510–01–537–7853—DAYMAX, GLE Day at a View, 2008, 7-hole
NSN: 7510–01–537–7856—DAYMAX, GLE Month at a View, 2008, 7-hole
NSN: 7510–01–537–7859—DAYMAX, GLE Week at a View, 2008, 7-hole
NSN: 7510–01–537–7863—DAYMAX, Tabbed Monthly, 2008, 3-hole
NSN: 7510–01–537–7868—DAYMAX, Tabbed Monthly, 2008, 7-hole
NSN: 7530–01–537–7837—DAYMAX System, LE, 2008, Black
NSN: 7530–01–537–7837L—DAYMAX System, LE, 2008, Black w/Logo
NSN: 7530–01–537–7838—DAYMAX System, IE, 2008, Black
NSN: 7530–01–537–7838L—DAYMAX System, IE, 2008, Black w/Logo
NSN: 7530–01–537–7839—DAYMAX System, LE, 2008, Navy
NSN: 7530–01–537–7839L—DAYMAX System, LE, 2008, Navy w/Logo
NSN: 7530–01–537–7840—DAYMAX System, LE, 2008, Burgundy
NSN: 7530–01–537–7840L—DAYMAX System, LE, 2008, Burgundy w/Logo
NSN: 7530–01–537–7842—DAYMAX System, Desert, Camouflage Planner, 2008
NSN: 7530–01–537–7842L—DAYMAX System, Desert, Camouflage Planner, 2008 w/Logo
NSN: 7530–01–537–7843—DAYMAX System, IE, 2008, Navy
NSN: 7530–01–537–7843L—DAYMAX System, IE, 2008, Navy w/Logo
NSN: 7530–01–537–7844—DAYMAX System, GLE, 2008, Black
NSN: 7530–01–537–7844L—DAYMAX System, GLE, 2008, Black w/Logo
NSN: 7530–01–537–7845—DAYMAX System, JR Version, 2008, Black
NSN: 7530–01–537–7845L—DAYMAX System, JR Version, 2008, Black w/Logo
NSN: 7530–01–537–7846—DAYMAX System, IE, 2008, Burgundy
NSN: 7530–01–537–7846L—DAYMAX System, IE, 2008, Burgundy w/Logo
NSN: 7530–01–537–7848—DAYMAX System, GLE, 2008, Navy
NSN: 7530–01–537–7848L—DAYMAX System, GLE, 2008, Navy w/Logo
NSN: 7530–01–537–7849—DAYMAX System, JR Version, 2008, Navy
NSN: 7530–01–537–7849L—DAYMAX System, JR Version, 2008, Navy w/Logo
NSN: 7530–01–537–7852—DAYMAX System, GLE, 2008, Burgundy
NSN: 7530–01–537–7852L—DAYMAX System, GLE, 2008, Burgundy w/Logo
NSN: 7530–01–537–7854—DAYMAX System, JR Version, 2008, Burgundy
NSN: 7530–01–537–7854L—DAYMAX System, JR Version, 2008, Burgundy w/Logo
NSN: 7530–01–537–7857—DAYMAX System, DOD Planner, 2008
NSN: 7530–01–537–7857L—DAYMAX System, DOD Planner, 2008 w/Logo
NSN: 7530–01–537–7864—DAYMAX System, Woodland, Camouflage Planner, 2008
NSN: 7530–01–537–7864L—DAYMAX System, Woodland Camouflage Planner, 2008 w/Logo
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, PA
Contracting Activity: GSA/FSS OFC SUP Ctr—Paper Products, New York, NY

Services

Service Type/Location: Administrative Services
GSA, Las Vegas—Nevada Field Office: 600 Las Vegas Boulevard, South, Las Vegas, NV
NPA: Opportunity Village Association for Retarded Citizens, Las Vegas, NV
Contracting Activity: Bureau of Immigration and Customs Enforcement, FPS West Consolidated Contract Group, Denver, CO

Service Type/Location: Custodial Services
Department of Homeland Security: 6416 Sossamon Road (Williams Gateway Airport), Mesa, AZ
NPA: Goodwill Community Services, Inc., Phoenix, AZ
Contracting Activity: Bureau of Customs and Border Protection, Office of Procurement, Washington, DC

Barry S. Lineback,
Director, Business Operations.

[FR Doc. E9–11312 Filed 5–14–09; 8:45 am]
BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Policy Board

AGENCY: Department of Defense.

ACTION: Modification of Federal Advisory Committee Charter.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.65, the Department of Defense gives notice that it intends to revise the charter for the Defense Policy Board. Specifically, the Department is, (a) Changing the name of the committee from the Defense Policy Board Advisory Committee to the Defense Policy Board; (b) increasing the number of committee members from twenty-six to twenty-eight; and (c) updating the operating cost.

FOR FURTHER INFORMATION CONTACT: Contact Jim Freeman, DoD Committee Management Office, 703–601–6128.

SUPPLEMENTARY INFORMATION: The Defense Policy Board, pursuant to 41 CFR 102–3.50(d), is a discretionary Federal advisory committee established to provide the Secretary of Defense and the Deputy Secretary of Defense, through the Under Secretary of Defense for Policy, with independent, informed advice and opinion concerning matters of defense policy.

The Board will focus on: (a) Issues central to strategic DoD planning; (b) policy implications of U.S. force structure and force modernization and transformation on DoD's ability to execute U.S. defense strategy; (c) U.S. regional defense policies; and (d) any other research and analysis of topics raised by the Secretary of Defense, Deputy Secretary or Under Secretary of Defense for Policy.

The Under Secretary of Defense (Policy) may act upon the Board's advice and recommendations.

The Defense Policy Board shall be comprised of no more than twenty-eight members, who have distinguished backgrounds in national security affairs,

and no more than four of the members shall be Federal officers or employees.

Board members appointed by the Secretary of Defense, who are not full-time Federal officers or employees, shall be appointed as experts and consultants under the authority of 5 U.S.C. 3109, and serve as Special Government Employees. Board members will be appointed to serve a term of two years, and their consultant appointments will be renewed annually. With the exception of travel and per diem for official travel, Board members shall serve without compensation.

The Secretary of Defense shall select the Board's Chairperson from the membership at large. In addition, the Under Secretary of Defense for Policy may appoint consultants to advise the Board and Board's task forces and these individuals shall have no voting privileges.

The Defense Policy Board shall meet at the call of the Board's Designated Federal Officer, in consultation with the Chairperson and the Under Secretary of Defense for Policy. The Designated Federal Officer shall be a full-time or permanent part-time DoD employee, and shall be appointed in accordance with established DoD policies and procedures. The Designated Federal Officer or duly appointed Alternate Designated Federal Officer shall attend all Board meetings and subcommittee meetings.

The Defense Policy Board shall be authorized to establish subcommittees, as necessary and consistent with its mission, and these subcommittees or working groups shall operate under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and other appropriate Federal regulations.

Such subcommittees or workgroups shall not work independently of the chartered Board, and shall report all their recommendations and advice to the Defense Policy Board for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered Board nor can they report directly to the Department of Defense or any Federal officers or employees who are not members of the Defense Policy Board.

Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the Defense Policy Board membership about the committee's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meetings of the Defense Policy Board.

All written statements shall be submitted to the Designated Federal Officer for the Defense Policy Board, and this individual will ensure that the written statements are provided to the membership for their consideration. Contact information for the Designated Federal Officer can be obtained from the GSA's FACA Database—*https://www.fido.gov/facadatabase/public.asp*.

The Designated Federal Officer, pursuant to 41 CFR 102–3.150, will announce planned meetings of the Defense Policy Board. The Designated Federal Officer, at that time, may provide additional guidance on the submission of written statements that are in response to the stated agenda for the planned meeting in question.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–11350 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee

AGENCY: Department of Defense.

ACTION: Meeting notice.

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 the following Federal Advisory Committee meetings of the U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee will take place.

U.S. Nuclear Command and Control System Comprehensive Review Advisory Committee.

DATES: June 2, 2009 from 0800–1700.

ADDRESSES: U.S. Nuclear Command and Control System Support Staff, 5201 Leesburg Pike, Falls Church, VA 22041.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Jones, (703) 681–1924, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041.

SUPPLEMENTARY INFORMATION: *Purpose of the Meetings:* Continuation of the 20 April meeting for the Federal Advisory Committee to continue to review and discuss contents of its Final Report.

JUNE 2, 2009

Time	Topic	Presenter
8:00 am	Administrative Remarks	CAPT Budney, USN (NSS).
8:45 am	Review and Discussion	Advisory Committee.
10:45 am	Break.	
11:00 am	Review and Discussion	Advisory Committee.
12:00 pm	Lunch.	
1:00 pm	Review and Discussion	Advisory Committee.
3:15 pm	Break.	
3:30 pm	Deliberations and Guidance	Advisory Committee.
5:00 pm	Adjourn	DFO.

Pursuant to 5 U.S.C. 552b, as amended and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. The Director, U.S. Nuclear Command and Control System Support Staff, in consultation with his General Counsel, has determined in writing that the public interest requires that all sessions of the committee's meeting will be closed to the public because they will be concerned with classified information and matters covered by section 5 U.S.C. 552b(c)(1).

Committee's Designated Federal Officer: Mr. William L. Jones, (703) 681–8681, U.S. Nuclear Command and Control System Support Staff (NSS), Skyline 3, 5201 Leesburg Pike, Suite 500, Falls Church, Virginia 22041. *William.jones@nss.pentagon.mil.*

Pursuant to 41 CFR paras. 102–3.105(j) and 102–3.140, and section 10(a)(3) of the Federal Advisory Committee Act of 1972, the public or interested organizations may submit written statements at any time to the Nuclear Command and Control System Federal Advisory Committee about its mission and functions. All written statements shall be submitted to the Designated Federal Officer for the Nuclear Command and Control System Federal Advisory Committee. He will ensure that written statements are provided to the membership for their consideration. Written statements may also be submitted in response to the stated agenda of planned committee meetings. Statements submitted in response to this notice must be received by the Designated Federal Official at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after that date may not be provided or considered by the Committee until its next meeting. All submissions provided before that date will be presented to the committee members before the meeting that is subject of this notice. Contact information for the Designated Federal Officer is listed above.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–11345 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Board of Visitors meeting; correction.

SUMMARY: On May 8, 2009, 74 FR 21664, the Department of Defense published a notice announcing a meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) on May 20, 2009. This notice is published to inform participants of the new meeting location. All other information remains unchanged.

ADDRESSES: Defense Acquisition University, 9820 Belvoir Road, Fort Belvoir, Virginia 22060.

FOR FURTHER INFORMATION CONTACT: Ms. Christen Goulding at 703–805–5134.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–11346 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Improvised Explosive Devices (IEDs) Phase III will meet in closed session on 2–3 June 2009; at Strategic Analysis, Inc., 4075 Wilson Boulevard, Suite 200, Arlington, VA. The Task Force members will discuss interim findings and recommendations resulting from ongoing Task Force activities. The Task Force will also discuss plans for future consideration of scientific and technical aspects of specific strategies, tactics, and policies as they may affect the U.S. national defense posture.

DATES: June 2–3, 2009.

ADDRESSES: Strategic Analysis, Inc., 4075 Wilson Boulevard, Suite 200, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: LTC Karen Walters, USA, Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140, via e-mail at *karen.walters@osd.mil,* or via phone at (703) 571–0082.

SUPPLEMENTARY INFORMATION:

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will act as an independent sounding board to the Joint IED organization by providing feedback at quarterly intervals; and develop strategic and operational plans, examining the goals, process and substance of the plans.

The task force's findings and recommendations, pursuant to 41 CFR 102–3.140 through 102–3.165, will be presented and discussed by the membership of the Defense Science Board prior to being presented to the Government's decision maker.

Pursuant to 41 CFR 102–3.120 and 102–3.150, the Designated Federal Officer for the Defense Science Board will determine and announce in the **Federal Register** when the findings and recommendations of the June 2–3, 2009, meeting are deliberated by the Defense Science Board.

Interested persons may submit a written statement for consideration by the Defense Science Board. Individuals submitting a written statement must submit their statement to the Designated Federal Official at the address detailed below, at any point, however, if a written statement is not received at least 10 calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the Defense Science Board. The Designated Federal Official will review all timely submissions with the Defense Science Board Chairperson, and ensure they are provided to members of the Defense Science Board before the meeting that is the subject of this notice.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–11349 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Group of Advisors Meeting

AGENCY: Under Secretary of Defense Personnel and Readiness, DoD.

ACTION: Notice of meeting; correction.

SUMMARY: On May 6, 2009, 74 FR 20930, the Department of Defense published a notice announcing a meeting of the National Security Education Board Group of Advisors on May 20–21, 2009. This notice is published to inform participants of the new meeting location. All other information remains unchanged.

ADDRESSES: Carnegie Mellon University, University Center, Rangos Hall No. 3, Building #28, Pittsburgh, PA 15213.

FOR FURTHER INFORMATION CONTACT: Dr. Kevin Gormley, Program Officer, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, P.O. Box 20010, Arlington, Virginia 22209–2248; (703) 696–1991. Electronic mail address: *Gormleyk@ndu.edu.*

Dated: May 11, 2009.

Morgan E. Frazier,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–11353 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on June 16, 2009 from 0800 hrs until 1800 hrs and on June 17, 2009 from 0800 hrs until 1000 hrs at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C. 552B (c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–11348 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0065]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

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

DATES: The proposed action will be effective without further notice on June 15, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Chief Privacy and FOIA Officer, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed 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 new or altered systems reports.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S500.50

SYSTEM NAME:

Facility Access Records (November 23, 2005, 70 FR 70796).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Staff Director, Public Safety, Headquarters Defense Logistics Agency, ATTN: DES–S, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

* * * * *

STORAGE:

Delete entry and replace with ''Records are maintained in paper file folders and on electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are maintained in areas accessible only to DLA Headquarters, field activities security supervisory, and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Security Operations Divisions, Office of Public Safety, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within the DLA field activity responsible for the operation of security forces and staff at the DLA field activity.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether this system of records contains information about them should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or the Privacy Act Office of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.''

Written requests for information should contain name, Social Security Number (SSN), mailing address and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or the Privacy Act Office of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain name, Social Security Number (SSN), mailing address and telephone number.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S500.50

SYSTEM NAME:

Facility Access Records.

SYSTEM LOCATION:

Staff Director, Public Safety, Headquarters Defense Logistics Agency, ATTN: DES–S, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221, and the Defense Logistics Agency field activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian and military personnel, contractor employees, and individuals requiring access to DLA-controlled installations or facilities. The system also contains data on children of civilian employees, military personnel, and contractors where the parents have requested that a child identification badge be issued.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains documents relating to requests for and issuance of facility entry badges and passes and motor vehicle registration. The records contain individual's name; Social Security Number; physical and electronic duty addresses; physical and electronic home addresses; duty and home telephone numbers; emergency-essential status; date and place of birth; citizenship; badge number, type of badge, and issue and expiration dates; facility identification and user codes and dates and times of building entry; current photograph; physical descriptors such as height, hair and eye color; blood type; fingerprint data; handicap data; security clearance data; personal vehicle description to include year, make, model, and vehicle identification number; State tag data; operator's permit data; inspection and insurance data; vehicle decal number, parking lot assignment; parking infractions; the fact of participation in mass transit programs; emergency contact data; and names of children registered at DLA child development centers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations, 5 U.S.C. 6122, Flexible schedules, agencies authorized to use; 5 U.S.C. 6125, Flexible schedules, time recording devices; 10 U.S.C. 133, Under Secretary of Defense for Acquisition, Technology, and Logistics; 23 U.S.C. 401 et seq., National Highway Safety Act of 1966; E.O. 9397 (SSN); and E.O. 10450, Security Requirements for Government Employees.

PURPOSE(S):

Information is maintained by DLA police and public safety personnel is used to control access into DLA-managed installations, buildings, facilities, and parking lots; to manage reserved, handicap and general parking; to verify security clearance status of individuals requiring entry into restricted access areas; to account for building occupants and to effect efficient evacuation during simulated and actual threat conditions; to relay threat situations and conditions to DoD law enforcement officials for investigative or evaluative purposes; and to notify emergency contact points of situations affecting a member of the workforce. Names of children registered at DLA child care centers are collected to notify the caregivers of emergencies affecting parents and to identify the children who may require special accommodations due to that emergency. In support of morale programs and when requested by parents, critical descriptive data and a current photograph of their child are captured for parental use should a child go missing.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routine Uses'' set forth at the beginning of DLA's compilation of systems of records notices apply to this system except for information collected on children.

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

STORAGE:

Records are maintained in paper file folders and on electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, facility or user code, or decal number.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA Headquarters, field activities security supervisory, and staff personnel who use the records to perform their duties. All records are maintained on closed military installations with security force personnel performing installation access control and random patrols. Common Access Cards and personal identification numbers are used to authenticate authorized desktop and laptop computer users. Computer servers are scanned quarterly or monthly to assess system vulnerabilities. Systems security updates are accomplished daily. The computer files are password protected with access restricted to authorized users with a need for the information. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours, with access restricted during duty hours to authorized users with a need for the information.

RETENTION AND DISPOSAL:

Vehicle registration records are destroyed when superseded or upon normal expiration or 3 years after revocation; individual badging and pass records are destroyed upon cancellation or expiration or 5 years after final action to bar from facility.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security Operations Divisions, Office of Public Safety, Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Suite 3533, Fort Belvoir, VA 22060–6220, and the Security Managers within the DLA Field Activity responsible for the operation of security forces and staff at the DLA field activity.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about them should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or the Privacy Act Office of the DLA Field Activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain name, Social Security Number (SSN), mailing address and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221 or the Privacy Act Office of the DLA field activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

Written requests for information should contain name, Social Security Number (SSN), mailing address and telephone number.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Data is supplied by the individual and public safety personnel. Data for child identification badges is provided by the parent.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–11354 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0061]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

AGENCY: Department of Defense.

ACTION: Notice of Proposed Changes to the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces and Implementation of a New Electronic Filing Program.

SUMMARY: This notice announces the following proposed changes to Rules 19(a)(5), 20(e), 21(c)(2), 37(a), 37(b)(2), and 40(b)(3) of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces and implementation of a new electronic filing program for public notice and comment. On April 30, 2009, at 74 FR 19947, the Department of Defense published a notice of this same title. The **SUMMARY** section stated that ''new language is in bold print'' but the notice did not contain bold print. This notice identifies those changes made.

DATES: Comments on the proposed changes must be received within 30 days of the date of this corrected notice.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, OSD Mailroom 3C843, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of the Court, telephone (202) 761–1448.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Liaison Officer, Department of Defense.

Rule 19(a)(5):

Amend Rule 19 (a)(5) by:

A. Removing the existing paragraphs (A) and (B) which currently read:

''(A) Article 62, UCMJ, appeals. In cases involving a decision by a Court of Criminal Appeals on appeal by the United States under Article 62, UCMJ, 10 USC § 862, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed no later than 20 days after the issuance by the Clerk of a notice of docketing of such a petition for grant of review. See Rule 10(c). An appellee's answer to the supplement to the petition for grant of review shall be filed no later than 10 days after the filing of such supplement. A reply may be filed by the appellant no later than 5 days after the filing of the appellee's answer.

(B) Other appeals. In all other appeal cases, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed no later than 30 days after the issuance by the Clerk of a notice of docketing of a petition for grant of review. See Rule 10(c). An appellee's answer to the supplement to the petition for grant of review may be filed no later than 30 days after the filing of such supplement. See Rule 21(e). A reply may be filed by the appellant no later than 10 days after the filing of the appellee's answer.''

B. And by adding new paragraphs (A) and (B) in their place, to read as follows:

(A) In all cases where the petition is filed by counsel, a supplement to the petition establishing good cause in accordance with Rule 21 shall be filed contemporaneously with the petition. Motions for enlargement of time to file the supplement, while disfavored, will be granted for good cause shown. An appellee's answer to the supplement to the petition, except for cases on appeal by the United States under Article 62, UCMJ, 10 U.S.C. § 862 (2000), may be filed no later than 20 days after the filing of the supplement. See Rule 21(e). A reply may be filed by the appellant no later than 5 days after the filing of appellee's answer. An appellee's answer to the supplement in a case under appeal by the United States under Article 62, UCMJ, may be filed no later than 10 days after the filing of the supplement; an appellant may file a reply no later than 5 days after the filing of appellee's answer.

(B) In all cases where the petition is filed by the appellant, a supplement to the petition shall be filed by counsel no later than 20 days after the issuance by the Clerk of a notice of docketing of the petition. See Rule 10(c). An appellee's answer to the supplement to the petition and an appellant's reply may be filed in accordance with the time limits contained in Rule 19(a)(5)(A).

Comment: The changes will accelerate the case disposition process. The accelerated time limits are accompanied with a provision to obtain extensions for good cause shown to address concerns that there may be circumstances where additional time may be justified.

Rule 20(e):

Amend Rule 20(e) by:

A. Removing the existing paragraph (e) which currently reads:

''(e) Upon issuance by the Clerk under Rule 10(c) of a notice of docketing of a petition for grant of review counsel for the appellant shall file a supplement to the petition in accordance with the applicable time limit set forth in Rule 19(a)(5)(A) or(B), and the provisions of Rule 21.''

B. And by adding new paragraph (e) in its place, to read as follows:

(e) Upon issuance by the Clerk under Rule 10(c) of a notice of docketing of a petition for grant of review filed personally by an appellant, counsel for the appellant shall file a supplement to the petition in accordance with the applicable time limit set forth in Rule

19(a)(5)(B), and the provisions of Rule 21.

Comment: This change is a conforming amendment to bring Rule 20(e) into alignment with the change in Rule 19(a)(5).

Rule 21(c)(2):

Amend Rule 21(c)(2) by:

A. Removing the existing paragraph (c)(2) which currently reads:

''(2) *Answer/reply in other appeals.* An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than 30 days after the filing of the supplement; *see* Rule 21(e); (remainder of paragraph is unchanged).''

B. And by adding new paragraph (c)(2) in its place, to read as follows:

(2) *Answer/reply in other appeals.* An appellee's answer to the supplement to the petition for grant of review in all other appeal cases may be filed no later than 20 days after the filing of the supplement; *see* Rule 21(e); (remainder of paragraph is unchanged).

Comment: This change conforms Rule 21(c)(2) to the change in Rule 19(a)(5).

Rules 37(a) and 37(b)(2):

Amend Rules 37(a) and 37(b)(2) by:

A. Removing the existing paragraphs 37(a) and 37(b)(2) which currently read:

''(a) Printing. Except for records of trial and as otherwise provided by Rules 24(f) and 27(a)(4), all pleadings and other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white unglazed paper, 8.5 by 11 inches in size, securely fastened in the top left corner.

(b)(2) An original and 7 legible copies of all pleadings or other papers relative to a case shall be filed.''

B. And by adding new paragraphs 37(a) and 37(b)(2) in their place, to read as follows:

(a) Printing. Except for records of trial and as otherwise provided by Rules 24(f) and 27(a)(4) or any order of the Court regarding the electronic filing of pleadings, all pleadings and other papers relative to a case shall be typewritten and double-spaced, printed on one side only on white unglazed paper, 8.5 by 11 inches in size, securely fastened in the top left corner.

(b)(2) Except for electronically filed pleadings, an original and 7 legible copies of all pleadings or other papers relative to a case shall be filed.

Comment: These changes are proposed to account for orders of the Court pertaining to electronic filing of pleadings.

Rule 40(b)(3):

Amend Rule 40(b)(3) by:

A. Removing the existing paragraph 40(b)(3) which currently reads:

''(3) *Time allowed.* Each side will normally be allotted 30 minutes to present oral argument.''

B. And by adding new paragraph 40(b)(3) in its place, to read as follows:

(3) *Time allowed.* Each side will normally be allotted 20 minutes to present oral argument.

Comment: This change is proposed to bring the rule into conformance with recent court practice.

And also by adding the following:

Proposed Order on Electronic Filing

Effective (date), the following pleadings may be filed on paper or electronically in accordance with the guidelines attached to this Order:

(a) petitions for grant of review filed by counsel under Rule 18(a)(1);

(b) supplements to petitions for grant of review filed under Rule 21;

(c) answers (including 10-day letters to the Clerk) and replies filed under Rule 21(c); and

(d) motions filed under Rule 30 that concern the pleadings described in paragraphs (a)–(c), and replies thereto, when such motions are filed prior to the Court's action granting or denying a petition for grant of review.

It is further ordered that the Orders pertaining to electronic filing issued on May 8, 2003 (58 M.J. 282) and August 5, 2004 (60 M.J. 308) are hereby rescinded, effective (date).

Proposed Guidelines for Electronic Filing of Pleadings

1. Scope

The United States Court of Appeals for the Armed Forces adopts the following provisions to govern the filing of the documents described in paragraphs (a)–(d) of the order (hereinafter collectively referred to as ''petition documents''):

a. This Order applies to all petition documents filed electronically on or after (date). An appendix to the supplement to the petition for grant of review (containing the decision of the Court of Criminal Appeals, matters submitted pursuant to *United States* v. *Grostefon*, 12 M.J. 431 (C.M.A. 1982) and other required matter) is included in this requirement to be filed electronically unless it consists of more than 50 pages. In such a case, the appendix may be submitted on paper and the supplement submitted electronically. In lieu of submitting an appendix in excess of 50 pages on paper, counsel may submit it in a CD or DVD format and note in the supplement that it is being filed in that format under separate cover. Record matters in the form of video media on CD–ROM or DVD may be submitted in a separate volume of the appendix that is filed in accordance with Rule 21(b).

b. A petition for grant of review filed personally by an appellant shall be filed on paper as provided under Rule 20(a). All subsequent petition documents filed by counsel in such a case may be filed on paper or electronically except as provided in section 1.c of these guidelines.

c. This Order does not provide for electronic filing of documents concerning other matters, such as documents concerning certified cases; mandatory review cases; writ-appeal petitions; petitions for extraordinary relief; petitions for new trial; and petitions for reconsideration. In a case arising under Article 67(a)(3), UCMJ, (petitions for grant of review), the Order permits electronic filing only with respect to documents filed before the Court issues an order granting or denying review.

2. Electronic Filing Address

Counsel shall file petition and motion documents at the following e-mail address: (to be filled in)*@armfor.uscourts.gov.*

For questions or help concerning the electronic filing of pleadings, counsel should contact the Clerk's Office at (202) 761–1448.

3. Procedure

a. The electronic filing of a petition document shall be deemed filed as of the date and time of the transmission of the electronic mail message.

b. The electronic mail message shall contain the following in the subject block: (1) The name of the case; (2) the docket number if a docket number has been assigned; and (3) the words ''electronic filing.'' A description of what is being attached will be included in the body of the electronic mail message.

c. The pleading shall be attached to the electronic mail message in Portable Document Format (PDF), and, when printed, shall be in compliance with the Rules of Practice and Procedure of the Court.

d. Counsel shall send an electronic copy of the message and all attachments to opposing counsel to accomplish service of the pleading under Rule 39. This may be accomplished by listing opposing counsel as a ''cc'' recipient of the electronic message.

e. The pleading attached to an electronic filing shall contain the conformed signature (''/s/'') or digital signature of the attorney of record. This will comply with Rule 38.

f. If a pleading is filed electronically in accordance with this Order, the party is not required to prepare and file printed copies under Rules 37(a) and 37(b)(2). The Court will send a reply electronic message to the sender indicating receipt of the electronic filing.

g. Classified material and material under seal will not be filed electronically. If such matters need to be filed, they will be submitted to the Court on paper as a supplemental filing to the document in which they would otherwise appear. In such cases, counsel will include in the text of the electronic mail message a notation that classified or sealed material is being separately submitted. The classified or sealed material will be appropriately packaged, marked and delivered, and will include a notation that it accompanies an electronic filing in the case. All classified material will be handled in accordance with Rule 12.

h. Counsel must refrain from including and shall redact the following personal data identifiers from documents filed with the Court:

- Social security numbers
- Names of minors
- Dates of birth
- Financial account numbers
- Home addresses.

i. Upon the entry of an order granting or denying an electronically filed petition for grant of review, the Clerk will electronically transmit a copy of the order to counsel.

Comment: Appellate courts are increasingly providing for electronic filing of pleadings. This proposal will permit electronic filing of pleadings at the petition stage of cases before the Court. By making the program optional, the rules provide for circumstances in which counsel may find it necessary to file on paper.

[FR Doc. E9–11324 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent To Prepare an Environmental Impact Statement for TRIDENT Support Facilities Explosives Handling Wharf, Naval Base Kitsap-Bangor, Silverdale, Kitsap County, WA and To Announce Public Scoping Meeting

AGENCY: Department of Navy, DoD.

ACTION: Notice.

SUMMARY: Pursuant to section 102 of the National Environmental Policy Act of 1969, and the regulations implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the Department of Navy (Navy) announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the potential environmental impacts associated with the construction and operation of a proposed new Explosives Handling Wharf (EHW) located adjacent to, but separate from, the existing EHW on Hood Canal, NBK-Bangor, WA, to support TRIDENT submarines.

The proposed action consists of in-water and land-based construction including a covered ordnance operations area, a support building on the wharf, and a warping wharf. A warping wharf is a long narrow wharf extension used to position submarines prior to moving into the operations area of the EHW.

As part of the U.S. Navy's sea-based strategic deterrence mission, the Navy Strategic Systems Programs (SSP) directs research, development, manufacturing, test, evaluation, and operational support of the TRIDENT Fleet Ballistic Missile program. SSP is the Action Proponent and the Navy is the lead agency for this project.

On June 10, 2008, the Navy provided notice in the **Federal Register** (73 FR 32682) of its intent to prepare an EIS for a TRIDENT Support Facilities EHW and to announce a public scoping meeting. On June 30, 2008, the Navy provided notice in the **Federal Register** (73 FR 36847) of its decision to cancel the June 10, 2008 Notice of Intent. The Notice of Intent was cancelled to allow the Navy the opportunity to review and validate the need for the project and identify other alternative solutions to the proposed construction. After a thorough review, the Navy has now revalidated the requirement for a second EHW at NAVBASE Kitsap Bangor.

The Navy will hold three public scoping meetings for the purpose of further identifying the scope of issues to be addressed in the EIS. Federal, State, and local agencies and the public are invited to participate in the scoping process for the EIS. Comments are being solicited to help identify significant issues or concerns related to the proposed action, determine the scope of issues to be addressed in the EIS, and identify and refine alternatives to the proposed action.

The Navy will conduct public scoping meetings to receive oral and/or written comments on environmental concerns that should be addressed in the EIS. The public scoping meetings will be conducted in English and will be arranged in an informal, open house format. Attendees will be asked to sign in and will be directed to various stations manned by Navy representatives and technical staff who will provide information and answer questions. Several large display boards will be located throughout the meeting locations to assist attendees in understanding the project and the alternatives. A comment table, supplied with comment sheets, will be placed in an easily accessible and comfortable location. Fact sheets about the project and alternatives will be available to participants.

DATES: *Dates and Addresses:* The public scoping meetings will be held from 5:30 p.m. to 8:30 p.m. on the following dates and locations:

1. June 23, 2009 at the Poulsbo Fire Station Main Headquarters, Multipurpose Room, 911 NE. Liberty Road, Poulsbo, WA;
2. June 24, 2009 at the Port Ludlow Fire Station 31, Training Room, 7650 Oak Bay Road, Port Ludlow, WA;
3. June 25, 2009 at the John Stanford Center for Educational Excellence, Auditorium, 2445 3rd Avenue South, Seattle WA.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick Grzelak, Public Affairs Officer, Department of the Navy, Strategic Systems Programs, 2521 South Clark Street, Suite 1000, Arlington, VA 22202–3930, telephone: 703–601–9008, e-mail at: *nbkehweis@ssp.navy.mil*.

SUPPLEMENTARY INFORMATION: The purpose of the proposed action is to support current and future TRIDENT Fleet Ballistic Missile program requirements at NAVBASE Kitsap Bangor, WA. The proposed action is to construct and operate a proposed new EHW located adjacent to, but separate from, the existing EHW on Hood Canal to support TRIDENT submarines. A new EHW is needed to ensure the Navy has the facilities required to offload/load missiles and perform routine operations and upgrades necessary to maintain the TRIDENT program.

As part of the U.S. Navy's sea-based strategic deterrence mission, the TRIDENT submarines play a critical role of great strategic importance for the U.S. The Navy has only two Strategic Weapons Facilities for TRIDENT submarines. One in the Atlantic located in Kings Bay, Georgia and one in the Pacific located in Bangor, Washington. The Bangor facility has over time been upgraded, converted, and expanded, to handle variations in missile systems. Today's modern missile is a much more complex system, and takes more than twice the time to maintain and handle thus requiring additional Explosive Handling Wharf facilities to meet the

current mission. The new EHW is needed to maintain operational availability of the TRIDENT Program in the Pacific. The purpose of the proposed action is to meet current and future technical program requirements for the TRIDENT mission.

Alternatives for the proposed action were identified based on capability for meeting TRIDENT Program mission requirements, ability to avoid or minimize environmental impacts, siting requirements including proximity to existing infrastructure, availability of waterfront property, constructability of essential project features, and explosives safety restrictions.

Alternatives currently under consideration include: (1) Deep-Water Trestle EHW; (2) Onshore Trestle EHW; (3) No Action Alternative. For both action alternatives, the EHW would be located in deep water, parallel to and 600 feet from the shore, and placement of structures over the intertidal zone would be minimized. The new EHW would include a covered operations area approximately 600 feet long and 250 feet wide, supplemented by an uncovered wharf extension approximately 700 feet long and 35 feet wide.

The wharf would either be an anchored floating structure or a structure supported by piles. Separate pile-supported entrance and exit trestles, or bridges, would provide a roadway for missile transport vehicles to travel from shore to the EHW and back to shore. For both action alternatives, the entrance trestle would be constructed from the end of the existing EHW access road to connect to the north end of the new EHW. The two action alternatives differ in the location of the exit trestle, which would connect the south end of the new EHW to the existing EHW access road.

Under the Deep-Water Trestle alternative, parallel entry and exit trestles would be constructed to transport ordnance to and from the wharf. The exit trestle would be constructed over deep water to the extent possible, crossing the intertidal zone and returning to land at the existing EHW access road. The Deep-Water Trestle alternative would require approximately 900 feet of additional in-water construction but would avoid construction of a road on the steep embankment adjacent to the proposed EHW site.

For the Onshore Trestle alternative, the exit trestle would be constructed to take the shortest distance to shore from the south end of the new EHW. This alternative would require extension of the exit trestle approximately 1,400 feet along the edge of the steep embankment on the shore, away from the intertidal zone, to connect to the existing access road.

No decision will be made to implement any alternative until the EIS process is complete, with the release of the Record of Decision. Phased construction of the project would be completed in four years.

The impacts to be evaluated include, but will not be limited to, impacts on fish and marine mammals, essential fish habitat, effects on endangered and threatened species, impacts relating to underwater sound and underwater habitat, impacts to the migratory and transient movement of fish along the shore, impacts on cultural resources, reduction in water quality, impacts on wetlands, terrestrial impacts, effects on Tribal resources, and human health and public safety.

The analysis will include an evaluation of direct, indirect, short term, and long term impacts from the construction and operation of the new EHW and will account for cumulative impacts from other Navy and non-Navy activities in the project area.

The Navy is initiating the scoping process to identify community concerns and local issues to be addressed in the EIS. Federal agencies, State agencies, local agencies, and interested persons are encouraged to provide written comments in addition to, or in lieu of, oral comments at scheduled public scoping meetings.

Written comments must be postmarked by midnight July 17, 2009 and should be submitted to: Mr. Patrick Grzelak, Public Affairs Officer, Department of the Navy, Strategic Systems Programs, 2521 South Clark Street, Suite 1000, Arlington, VA 22202–3930, telephone: 703–601–9008, e-mail: *nbkehweis@ssp.navy.mil*.

Dated: May 11, 2009.

T.M. Cruz,

Lieutenant Commander, Alternate Federal Register Liaison Officer.

[FR Doc. E9–11004 Filed 5–14–09; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2009–0031]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a system of records.

SUMMARY: The Department of Air Force is deleting a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on June 15, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCISI, 1800 Air Force Pentagon, Suite 220, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Ben Swilley, 703–696–6172.

SUPPLEMENTARY INFORMATION: The Department of the Air Force system of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Air Force proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion 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.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AETC T

DELETION:

SYSTEM NAME:

Flying Training Records—Nonstudent (June 11, 1997, 62 FR 31793).

REASON:

The records contained in this system of records are no longer required. Accordingly, this Privacy Act System of Records Notice will be deleted from the Air Force's inventory.

[FR Doc. E9–11347 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0066]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to Delete 3 Systems of Records.

SUMMARY: The Defense Information Systems Agency is deleting three systems of records notices in its existing inventory of records 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 June 15, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

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

The Defense Information Systems Agency is deleting three systems of records notices in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletions:

K890.06

Card File for Forwarding Mail of Departed Personnel (February 22, 1993, 58 FR 10562).

REASON:

The program is non-operational, all records have been destroyed in accordance with the National Archives and Records Administration records retention schedule. The DISA Mailroom does not process any personal mail, nor do they maintain a card file for departed personnel.

KDEC.07

601–11 Duty Rosters (February 22, 1993, 58 FR 10562).

REASON:

These records are now covered under the System of Records Notice Recall Roster/Locator Records (July 6 2005, 70 FR 38892).

KDEC.08

101–06 Requests and Authorization for Temporary Duty Travel (February 22, 1993, 58 FR 10562).

REASON:

The program is non-operational, all records have been destroyed in accordance with the National Archives and Records Administration records retention schedule.

[FR Doc. E9–11351 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DOD–2009–OS–0067]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice To Amend a System of Records.

SUMMARY: Defense Information Systems Agency proposes to amend a system of records notice in its existing inventory of records 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 June 15, 2009 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933–I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

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

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed 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.

Dated: May 12, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

KEUR.08

SYSTEM NAME:

Travel Order and Voucher File (February 22, 1993, 58 FR 10562).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''Chapter 57, 5 U.S.C., Travel, Transportation, and Subsistence; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''Records maintained by system manager for budget and accounting purposes to verify amounts actually spent for travel, and for control of accountability for travel orders issued by Defense Information Systems Agency (DISA) Europe.''

* * * * *

STORAGE:

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

RETRIEVABILITY:

Delete entry and replace with ''By travel order number.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Some records may be cut off at the end of the fiscal year and destroyed 3 years after cutoff. Records are destroyed by degaussing.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Management Support Division, Defense Information Systems Agency-Europe, APO AE, 09131–4103.''

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 Chief, Management Support Division, Defense Information Systems Agency-Europe, APO AE, 09131–4103.

Requests should contain individual's name, address, and phone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Management Support Division, Defense Information Systems Agency-Europe, APO AE 09131–4103.

Requests should contain individual's name, address, and phone number.''

* * * * *

KEUR.08

SYSTEM NAME:

Travel Order and Voucher File.

SYSTEM LOCATION:

Management Support Division, Code DER, Defense Information Systems Agency-Europe, APO AE 09131–4103.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All personnel who perform official travel under orders issued by Defense Information Systems Agency (DISA) Europe.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system consist of travel orders, transportation requests, commercial carrier transportation tickets, travel advance vouchers, records of travel claims and payments. Data in the system includes the individual's name, Social Security Number, home phone and address, and other pertinent travel information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 57, 5 U.S.C., Travel, Transportation, and Subsistence; 10 U.S.C. 133, Under Secretary of Defense for Acquisition and Technology; and E.O. 9397 (SSN).

PURPOSE(S):

Records maintained by system manager for budget and accounting purposes to verify amounts actually spent for travel, and for control of accountability for travel orders issued by Defense Information Systems Agency (DISA) Europe.

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

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

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

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By travel order number.

SAFEGUARDS:

Records maintained in locked file containers accessible only to authorized personnel. Military police are posted at building entrance during duty hours.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Some records may be cut off at the end of the fiscal year and destroyed 3 years after cutoff. Records are destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Management Support Division, Defense Information Systems Agency-Europe, APO AE 09131–4103.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Chief, Management Support Division, Defense Information Systems Agency-Europe, APO AE 09131–4103.

Requests should contain individual's name, address, and phone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief, Management Support Division, Defense Information Systems Agency-Europe, APO AE 09131–4103.

Requests should contain individual's name, address, and phone number.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2; 32 CFR part 316; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Personal information is obtained from individual travelers and entered on the travel order form.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–11352 Filed 5–14–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 15, 2009.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or send e-mail to *oira_submission@omb.eop.gov*.

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

Dated: May 12, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Federal Student Aid

Type of Review: Revision.

Title: Fiscal Operations Report for 2008–2009 and Application to Participate for 2010–2011 (FISAP) and Reallocation Form E40–4P.

Frequency: Annually.

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

Reporting and Recordkeeping Hour Burden:

Responses: 5,798.
Burden Hours: 32,693.

Abstract: This application data will be used to compute the amount of funds needed by each school for the 2010–2011 award year. The Fiscal Operations Report data will be used to assess program effectiveness, account for funds expended during the 2008–2009 award year, and as part of the school funding process. The Reallocation form is part of the FISAP on the Web. Schools will use it in the summer to return unexpended funds for 2008–2009 and request supplemental FWS funds for 2009–2010. Changes being made to this collection due to the Higher Education Opportunity Act of 2008 are:

Part III added line items to report loan cancellations for various reasons as stated in the HEOA. Also, lines were added to allow for transfer of Federal Work-Study funds to the Federal Perkins Loan Program, which is now authorized through the HEOA.

Part IV was changed to allow for funds to be transferred from the Federal Supplemental Education Opportunity Grants Program to be spent in the Federal Work-Study Program.

Part V was changed to allow for funds to be transferred from the Federal Supplemental Education Opportunity Grants Program to be spend in the Federal Work-Study Program and to allow funds to be transferred from the Federal Work-Study Program to the Federal Perkins Loan Program. Lines were also added to report funds that were spent for disaster-affected students and students who participated in civic education activities.

Requests for copies of the information collection submission for OMB review may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 3962. 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. E9–11407 Filed 5–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before July 14, 2009.

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

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

Dated: May 11, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: IDEA Part C State Performance Plan (SPP) and Annual Performance Report (APR).

Frequency: SPP—Originally submitted in 2005 and updated annually as needed; APR-annual submission.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.
Burden Hours: 110,880.

Abstract: In accordance with 20 U.S.C. 1416(b)(1) and 20 U.S.C. 1442, not later than 1 year after the date of enactment of the Individuals with Disabilities Education Improvement Act of 2004, each lead agency must have in place a performance plan that evaluates the lead agency's efforts to implement the requirements and purposes of Part C and describe how the Lead Agency will improve such implementation. This plan is called the Part C State Performance Plan (Part C—SPP). In accordance with 20 U.S.C. 1416(b)(2)(C)(ii) the lead agency shall report annually to the public on the performance of each early intervention service program located in the State on the targets in the lead agency's performance plan. The lead agency also shall report annually to the Secretary on the performance of the State under the lead agency's performance plan. This report is called the Part C Annual Performance Report (Part C—APR). IC 1820–0578 is being extended so that States will continue to maintain the SPP and annually submit the APR.

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 4033. When you access the information collection, click on

''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–11405 Filed 5–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

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

DATES: Interested persons are invited to submit comments on or before July 14, 2009.

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

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

Dated: May 11, 2009.

Angela C. Arrington,

Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Annual State Application Under Part C of the Individuals with Disabilities Education Act as Amended in 2004.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 56.

Burden Hours: 560.

Abstract: In order to be eligible for a grant under 20 U.S.C. 1433, a State must provide assurance to the Secretary that the State has adopted a policy that appropriate early intervention services are available to all infants and toddlers with disabilities in the State and their families, including Indian infants and toddlers with disabilities and their families residing on a reservation geographically located in the State, infants and toddlers with disabilities who are homeless children and their families, and has in effect a statewide system that meets the requirements of 20 U.S.C. 1435. Some policies, procedures, methods, and descriptions must be submitted to the Secretary.

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 4032. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to 202–401–0920. Please specify the complete title of the information collection when making your request.

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

[FR Doc. E9–11401 Filed 5–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; Overview Information; Developing Hispanic-Serving Institutions (HSI) Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009 Catalog of Federal Domestic Assistance (CFDA) Number: 84.031S.

Dates:

Applications Available: May 15, 2009.

Deadline for Transmittal of Applications: June 15, 2009.

Deadline for Intergovernmental Review: August 13, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The HSI Program provides grants to assist HSIs to expand educational opportunities for, and improve the academic attainment of, Hispanic students. The HSI Program grants also enable HSIs to expand and enhance their academic offerings, program quality, and institutional stability.

Program Authority: 20 U.S.C. 1101–1101d, 1103–1103g.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for this program in 34 CFR part 606.

II. Award Information

Type of Award: Discretionary grant. Five-year Individual Development Grants and Five-year Cooperative Arrangement Development Grants will be awarded in FY 2009. Planning grants will not be awarded in FY 2009.

Estimated Available Funds: $16,914,300.

Estimated Range of Awards: $462,000–$700,000.

Estimate Average Size of Awards: Individual Development Grants:

$462,000. Cooperative Arrangement Development Grants: $625,000.

Maximum Awards: Individual Development Grants: $575,000. Cooperative Arrangement Development Grants: $700,000. We will not fund any application at an amount exceeding these maximum amounts for a single budget period of 12 months. We may choose not to further consider or review applications with budgets that exceed the maximum amounts specified if we conclude, during our initial review of the application that the proposed goals and objectives cannot be obtained with the specified maximum amount.

Estimated Number of Awards: Individual Development Grants: 20. Cooperative Arrangement Development Grants: 9.

Note: The Department is not bound by any estimates in this notice. Applicants should periodically check the HSI Program Web site for further information. The address is: *http://www.ed.gov/programs/idueshsi/index.html*.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Institutions of higher education (IHES) that qualify as eligible HSIs are eligible to apply for new Individual Development Grants and Cooperative Arrangement Development Grants under the HSI Program. To be an eligible HSI, an IHE must—

(1) Be accredited or preaccredited by a nationally recognized accrediting agency or association that the Secretary has determined to be a reliable authority as to the quality of education or training offered;

(2) Be legally authorized by the State in which it is located to be a junior college or to provide an educational program for which it awards a bachelor's degree;

(3) Be designated as an ''eligible institution'' by demonstrating that it: A) Has an enrollment of needy students as described in 34 CFR 606.3; and B) has low average educational and general expenditures per full-time equivalent (FTE) undergraduate student as described in 34 CFR 606.4; and

(4) Have an enrollment of undergraduate FTE students that is at least 25 percent Hispanic students at the end of the award year immediately preceding the date of application.

Effective September 30, 2006, the Third Higher Education Extension Act of 2006 amended Section 502(a) of the HEA by requiring that institutions report their undergraduate Hispanic FTE percentage at the end of the award year immediately preceding the date of application. Funds for the HSI Program are awarded each fiscal year; thus, for this program, the end of the award year refers to the end of the fiscal year prior to the application due date. The end of the fiscal year occurs on September 30 for any given year. Therefore, for purposes of making the determination described in paragraph (4), IHEs must report their undergraduate Hispanic FTE percent based on the student enrollment count closest to, but not after, September 30, 2008.

Note: The Higher Education Opportunity Act of 2008 (HEOA) amended section 503(b) of the HEA to include, among the authorized activities under the HSI program, activities to improve student services, including innovative and customized instruction courses designed to help retain students and move the students into core courses; articulation agreements and student support programs designed to facilitate the transfer of students from 2-year to 4-year institutions; and providing education, counseling services, and financial information designed to improve the financial and economic literacy of students or their families. The list of authorized activities in section 503(b) was also amended to use the term ''distance education technologies'' in place of ''distance learning academic instruction capabilities.''

The Notice Inviting Applications for Designation as Eligible Institutions for FY 2009 was published in the **Federal Register** on January 21, 2009 (74 FR 3579). The HSI eligibility requirements are in 34 CFR 606.2 through 606.5 and can be accessed from the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html*. These regulations do not reflect the changes made to the HSI program requirements by the Third Higher Education Extension Act of 2006 or the HEOA.

Relationship Between HSI and Title III, Part A Programs

Note 1: A grantee under the HSI Program, which is authorized by Title V of the HEA, may not receive a grant under any HEA, Title III, Part A Program. The Title III, Part A Programs include: the Strengthening Institutions Program; the American Indian Tribally Controlled Colleges and Universities Program; the Alaska Native and Native Hawaiian-Serving Institutions Programs; the Asian American and Native American Pacific Islander-Serving Institutions Program; and the Native American-Serving Non-Tribal Institutions Program. Further, a current HSI Program grantee may not give up its HSI grant in order to receive a grant under any Title III, Part A Program.

Note 2: An HSI that does not fall within the limitation described in Note 1 may apply for a FY 2009 grant under all Title III, Part A Programs for which it is eligible, as well as under the HSI Program. However, a successful applicant may receive only one grant.

Note 3: An eligible HSI that submits more than one application may only be awarded one Individual Development Grant *or* one Cooperative Arrangement Development Grant in a fiscal year. Furthermore, we will not award a second Cooperative Arrangement Development Grant to an otherwise eligible HSI for the same award year as the HSI's existing Cooperative Arrangement Development Grant.

Note 4: The Department will cross-reference for verification, data reported to the Department's Integrated Postsecondary Education Data System (IPEDS), the IHE's State-reported enrollment data, and the institutional annual report. If there are any differences in the percentages reported in IPEDS and the percentages reported in the grant application, the IHE should explain the differences as a part of its eligibility documentation.

2. *Cost Sharing or Matching:* There are no cost sharing or matching requirements unless the grantee uses a portion of its grant for establishing or improving an endowment fund. If a grantee uses a portion of its grant for endowment fund purposes, it must match those grant funds with non-Federal funds. (20 U.S.C. 1101b(c)(2)).

IV. Application and Submission Information

1. *Address to Request Application Package:* Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@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 a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

Page Limits: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We have established mandatory page limits for both the Individual Development Grant and the Cooperative Arrangement Development Grant applications. You must limit the section of the narrative that addresses the selection criteria to no more than 50 pages for the Individual Development Grant application and 70 pages for the Cooperative Arrangement Development

Grant application, using the following standards:

• A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.

• Double space (no more than three lines per vertical inch) all text in the application narrative, *except* titles, headings, footnotes, quotations, references, captions and all text in charts, tables, and graphs.

• Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

• Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman and Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, activity detail budget, and the five-year plan. However, the page limit does apply to all of the application narrative section (Part III).

We will reject your application if you exceed the page limit.

3. *Submission Dates and Times:*

Applications Available: May 15, 2009.

Deadline for Transmittal of Applications: June 15, 2009.

Applications for grants under this program must be submitted electronically using the Electronic Grant Application System (e-Application) accessible through the Department's e-Grants Web site. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We will not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under the For Further Information Contact in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: August 13, 2009.

4. *Intergovernmental Review:* This program competition is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program competition.

5. *Funding Restrictions:* We reference the regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

Applicability of Executive Order 13202.

Applicants that apply for construction funds under the HSI Program must comply with Executive Order 13202 signed by former President George W. Bush on February 17, 2001, and amended on April 6, 2001. This Executive order provides that recipients of Federal construction funds may not ''require or prohibit bidders, offerors, contractors, or subcontractors to enter into or adhere to agreements with one or more labor organizations, on the same or other construction project(s)'' or ''otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise adhere to agreements with one or more labor organizations, on the same or other construction project(s).'' However, the Executive order does not prohibit contractors or subcontractors from voluntarily entering into these agreements. Projects funded under this program that include construction activity will be provided a copy of this Executive order and will be asked to certify that they will adhere to it.

6. *Other Submission Requirements:* Applications for grants under this program competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instruction in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the HSI Program (CFDA Number 84.031S) must be submitted electronically using e-Application, accessible through the Department's e-Grants Web site at: *http://e-grants.ed.gov.*

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

While completing your electronic application, you will be entering data online that will be saved into a database. You may not e-mail an electronic copy of a grant application to us.

Please note the following:

• You must complete the electronic submission of your grant application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The e-Application system will not accept an application for this program after 4:30:00 p.m., Washington, DC time, on the application deadline date. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process.

• The hours of operation of the e-Grants Web site are 6:00 a.m. Monday until 7:00 p.m. Wednesday; and 6:00 a.m. Thursday until 8:00 p.m. Sunday, Washington, DC time. Please note that, because of maintenance, the system is unavailable between 8:00 p.m. on Sundays and 6:00 a.m. on Mondays, and between 7:00 p.m. on Wednesdays and 6:00 a.m. on Thursdays, Washington, DC time. Any modifications to these hours are posted on the e-Grants Web site.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.

• You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. You must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• Prior to submitting your electronic application, you may wish to print a copy of it for your records.

• After you electronically submit your application, you will receive an

automatic acknowledgement that will include a PR/Award number (an identifying number unique to your application).

• Within three working days after submitting your electronic application, fax a signed copy of the SF 424 to the Application Control Center after following these steps:

(1) Print SF 424 from e-Application.

(2) The applicant's Authorizing Representative must sign this form.

(3) Place the PR/Award number in the upper right hand corner of the hard-copy signature page of the SF 424.

(4) Fax the signed SF 424 to the Application Control Center at (202) 245–6272.

• We may request that you provide us original signatures on other forms at a later date.

Application Deadline Date Extension in Case of e-Application Unavailability: If you are prevented from electronically submitting your application on the application deadline date because e-Application is unavailable, we will grant you an extension of one business day to enable you to transmit your application electronically, by mail, or by hand delivery. We will grant this extension if—

(1) You are a registered user of e-Application and you have initiated an electronic application for this competition; and

(2) (a) E–Application is unavailable for 60 minutes or more between the hours of 8:30 a.m. and 3:30 p.m., Washington, DC time, on the application deadline date; or

(b) E–Application is unavailable for any period of time between 3:30 p.m. and 4:30:00 p.m., Washington, DC time, on the application deadline date.

We must acknowledge and confirm these periods of unavailability before granting you an extension. To request this extension or to confirm our acknowledgement of any system unavailability, you may contact either (1) the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT** (see VII. Agency Contact) or (2) the e-Grants help desk at 1–888–336–8930. If e-Application is unavailable due to technical problems with the system and, therefore, the application deadline is extended, an e-mail will be sent to all registered users who have initiated an e-Application. Extensions referred to in this section apply only to the unavailability of e-Application.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through e-Application because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to e-Application; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513 FAX: (202) 502–7861.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031S), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application, by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.031S), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, D.C. time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424, the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are in 34 CFR 606.22. In addition to these selection criteria, we evaluate an applicant's performance under a previous Development Grant under 34 CFR 606.24.

2. *Review and Selection Process:*

(A) Applicants must provide, as an attachment to the application, the documentation the IHE relied upon in determining that at least 25 percent of the IHE's undergraduate FTE students are Hispanic.

Note: The 25 percent requirement applies only to *undergraduate* Hispanic students and is calculated based upon FTE students. Instructions for formatting and submitting

the verification documentation to e-Application are in the application package for this competition.

(B) Tiebreaker for Development Grants. In tie-breaking situations for development grants described in 34 CFR 606.23(b), the HSI Program regulations require that we award one additional point to an application from an IHE that has an endowment fund of which the current market value, per FTE enrolled student, is less than the average current market value of the endowment funds, per FTE enrolled student, at comparable institutions that offer similar instruction. We also award one additional point to an application from an IHE that had expenditures for library materials per FTE enrolled student that are less than the average expenditures for library materials per FTE enrolled student at comparable institutions that offer similar instruction.

For the purpose of these funding considerations, we use 2006–2007 data.

If a tie remains after applying the tiebreaker mechanism above, priority will be given (a) for Individual Development Grants, to applicants that addressed the statutory priority found in section 521(d) of the HEA, as amended; and (b) for Cooperative Arrangement Development Grants, to applicants in accordance with section 524(b) of the HEA, under which the Secretary determines that the cooperative arrangement is geographically and economically sound or will benefit the applicant HSI.

If a tie still remains after applying the additional point(s), and the relevant statutory priority, we will determine the ranking of applicants based on the lowest endowment values per FTE enrolled student.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary in 34 CFR 75.118, 34 CFR 75.720 and in 34 CFR 606.31.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the HSI Program: (1) The percentage change, over the five-year grant period, of the number of full-time degree-seeking undergraduate students enrolled at HSIs. (2) The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same Hispanic-serving institution. (3) The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same four-year Hispanic-serving institution. (4) The percentage of first-time, full-time degree-seeking undergraduate students who were in their first year of postsecondary enrollment in the previous year and are enrolled in the current year at the same two-year Hispanic-serving institution. (5) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at four-year HSIs graduating within six years of enrollment. (6) The percentage of first-time, full-time degree-seeking undergraduate students enrolled at two-year HSIs graduating within three years of enrollment. (7) Federal cost per undergraduate and graduate degree at institutions in the Developing HSIs program.

VII. Agency Contacts

FOR FURTHER INFORMATION CONTACT: Carnisia M. Proctor, U.S. Department of Education, 1990 K Street, NW., 6th Floor, Washington, DC 20006–8513. Telephone: (202) 502–7606 or by e-mail: *Carnisia.Proctor@ed.gov*.

If you use TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities may obtain this document in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

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: May 12, 2009.

Daniel T. Madzelan,

Director, Forecasting and Policy Analysis.

[FR Doc. E9–11414 Filed 5–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Waivers Granted Under Section 9401 of the Elementary and Secondary Education Act of 1965, as Amended

SUMMARY: In this notice, we announce the waivers that the U.S. Department of Education (Department) granted during calendar year 2008 under the waiver authority in section 9401 of the Elementary and Secondary Education Act of 1965 (ESEA), as amended.

In 2008, the Department granted a total of 51 waivers under the ESEA section 9401 waiver authority. The waivers granted were as follows: (1) Four waivers related to Hurricanes Katrina, Rita, and Ike; (2) two new waivers allowing implementation of the ''growth model pilot,'' and nine extensions of existing waivers to continue implementation of a ''growth model pilot''; (3) six new waivers allowing implementation of the ''differentiated accountability model pilot''; (4) one new waiver and four continuations of existing waivers allowing local educational agencies (LEAs) in need of improvement to be

eligible to apply to their State educational agency (SEA) to become supplemental educational services (SES) providers; (5) four new waivers and three continuations of existing waivers allowing LEAs to provide SES to eligible students attending schools that receive funding under Title I, Part A of the ESEA (Title I schools) and are in the first year of school improvement; (6) one Title I schoolwide eligibility waiver; (7) one Title I, Part A within-district allocation waiver; (8) one waiver of the ESEA transferability rules; (9) one ''local-flex'' waiver; (10) four waivers to the Consolidated Grants restrictions; and (11) ten waivers allowing recipients of funds under the Indian Education program to charge additional administrative costs to the program.

Waiver Data:

Waivers Related to Hurricanes Katrina, Rita, and Ike

1. *Waiver Applicant:* Louisiana Department of Education.
- *Provision waived:* Tydings Amendment, section 421(b) of the General Education Provisions Act (GEPA).
- *Date waiver granted:* May 6, 2008.
- *Description of waiver:* Extended until September 30, 2009 the period of availability for fiscal year 2006 funds for all programs authorized under the ESEA.

2. *Waiver Applicant:* Mississippi Department of Education.
- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* October 7, 2008.
- *Description of waiver:* Extended until September 30, 2009 the period of availability for fiscal year 2006 Title II, Part A funds.

3. *Waiver Applicant:* Mississippi Department of Education.
- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* October 7, 2008.
- *Description of waiver:* Extended until September 30, 2009 the period of availability for fiscal year 2006 Title I, Part B, Subpart 1 funds.

4. *Waiver Applicant:* Texas Education Agency.
- *Provision waived:* Tydings Amendment, section 421(b) of GEPA.
- *Date waiver granted:* October 9, 2008.
- *Description of waiver:* Extended until September 30, 2009 the period of availability for fiscal year 2006 Title I, Part B, Subpart 1 funds.

II. ''Growth Model Pilots''

New Applicants:

1. *Waiver Applicant:* Michigan Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* June 10, 2008.
- *Description of waiver:* Provided Michigan the flexibility to implement a growth-based accountability model as part of determining adequate yearly progress (AYP) beginning in the 2007–2008 school year.

2. *Waiver Applicant:* Missouri Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* June 10, 2008.
- *Description of waiver:* Provided Missouri the flexibility to implement a growth-based accountability model as part of determining AYP beginning in the 2007–2008 school year, conditioned upon Missouri's adopting a uniform minimum group size for all subgroups, including students with disabilities and limited English proficient students.

Continuation Applicants:

1. *Waiver Applicant:* Alaska Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Alaska the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

2. *Waiver Applicant:* Arizona Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Arizona the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

3. *Waiver Applicant:* Arkansas Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Arkansas the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

4. *Waiver Applicant:* Delaware Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Delaware the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

5. *Waiver Applicant:* Florida Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Florida the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

6. *Waiver Applicant:* Iowa Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Iowa the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

7. *Waiver Applicant:* North Carolina Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended North Carolina the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

8. *Waiver Applicant:* Ohio Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Ohio the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

9. *Waiver Applicant:* Tennessee Department of Education.
- *Provision waived:* Section 1111(b)(2) of the ESEA.
- *Date waiver granted:* July 25, 2008.
- *Description of waiver:* Extended Tennessee the flexibility to continue to use a growth-based accountability model as part of determining AYP in 2008–2009 based on assessments administered in the 2007–2008 school year.

III. ''Differentiated Accountability Model Pilots''

1. *Waiver Applicant:* Florida Department of Education
- *Provision waived:* Section 1116 of the ESEA.
- *Date waiver granted:* July 1, 2008.
- *Description of waiver:* Provided Florida the flexibility to include its

differentiated accountability model as a part of its system of school improvement interventions based on assessment results from the 2007–2008 school year.

2. *Waiver Applicant:* Georgia Department of Education.

• *Provision waived:* Section 1116 of the ESEA.

• *Date waiver granted:* July 1, 2008.

• *Description of waiver:* Provided Georgia the flexibility to include its differentiated accountability model as a part of its system of school improvement interventions based on assessment results from the 2007–2008 school year.

3. *Waiver Applicant:* Illinois Department of Education.

• *Provision waived:* Section 1116 of the ESEA.

• *Date waiver granted:* July 1, 2008.

• *Description of waiver:* Provided Illinois the flexibility to include its differentiated accountability model as a part of its system of school improvement interventions based on assessment results from the 2007–2008 school year.

4. *Waiver Applicant:* Indiana Department of Education.

• *Provision waived:* Section 1116 of the ESEA.

• *Date waiver granted:* July 1, 2008.

• *Description of waiver:* Provided Indiana the flexibility to include its differentiated accountability model as a part of its system of school improvement interventions based on assessment results from the 2007–2008 school year.

5. *Waiver Applicant:* Maryland Department of Education.

• *Provision waived:* Section 1116 of the ESEA.

• *Date waiver granted:* July 1, 2008.

• *Description of waiver:* Provided Maryland the flexibility to include its differentiated accountability model as a part of its system of school improvement interventions based on assessment results from the 2007–2008 school year.

6. *Waiver Applicant:* Ohio Department of Education.

• *Provision waived:* Section 1116 of the ESEA.

• *Date waiver granted:* July 1, 2008.

• *Description of waiver:* Provided Ohio the flexibility to include its differentiated accountability model as a part of its system of school improvement interventions based on assessment results from the 2007–2008 school year.

IV. Allowing LEAs in Need of Improvement To Be Eligible To Apply to Their SEA To Become Supplemental Educational Services (SES) Providers

New Applicant:

1. *Waiver Applicant:* Charlotte-Mecklenburg Schools, NC.

• *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).

• *Date waiver granted:* August 4, 2008.

• *Description of waiver:* Permitted Charlotte-Mecklenburg Schools to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2008–2009 school year even though the LEA was identified for improvement.

Continuation Applicants:

1. *Waiver Applicant:* Anchorage School District, AK.

• *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).

• *Date waiver granted:* August 4, 2008.

• *Description of waiver:* Permitted the Anchorage School District to continue to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2008–2009 school year even though the LEA was identified for improvement.

2. *Waiver Applicant:* Boston Public Schools, MA.

• *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).

• *Date waiver granted:* August 4, 2008.

• *Description of waiver:* Permitted Boston Public Schools to continue to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2008–2009 school year even though the LEA was identified for improvement.

3. *Waiver Applicant:* Chicago Public Schools, IL.

• *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).

• *Date waiver granted:* August 4, 2008.

• *Description of waiver:* Permitted Chicago Public Schools to continue to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2008–2009 school year even though the LEA was identified for improvement.

4. *Waiver Applicant:* Hillsborough County Public Schools, FL.

• *Provision waived:* 34 CFR 200.47(b)(1)(iv)(B).

• *Date waiver granted:* August 4, 2008.

• *Description of waiver:* Permitted Hillsborough County Public Schools to continue to be eligible to apply to its SEA to become a provider of SES to eligible students during the 2008–2009 school year even though the LEA was identified for improvement.

V. Allowing LEAs to Provide SES to Eligible Students in Title I Schools in the First Year of School Improvement

New Applicants:

1. *Waiver Applicant:* Alabama Department of Education.

Provisions waived: Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, permitted all LEAs in Alabama to offer SES, rather than, or in addition to, public school choice, to eligible students in Title I schools in the first year of school improvement.

2. *Waiver Applicant:* Arkansas Department of Education.

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, permitted all LEAs in Arkansas to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

3. *Waiver Applicant:* Tennessee Department of Education.

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, permitted all LEAs in Tennessee to offer SES, in addition to public school choice, to eligible students in Title I schools in the first year of school improvement.

4. *Waiver Applicant:* Utah Department of Public Instruction.

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, permitted all LEAs in Utah to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

Continuation Applicants:

1. *Waiver Applicant:* Alaska Department of Education and Early Development.

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, permitted five LEAs—Anchorage School District, Fairbanks North Star Borough, Juneau Borough, Kenai Peninsula Borough, and Matanuska-Susitna Borough—to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

2. *Waiver Applicant:* North Carolina Department of Public Instruction.

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, continue to allow all LEAs in North Carolina to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

3. *Waiver Applicant:* Virginia Department of Education.

• *Provisions waived:* Sections 1116(b)(1)(E) and 1116(b)(5)(B) of the ESEA.

• *Date waiver granted:* August 1, 2008.

• *Description of waiver:* For the 2008–2009 school year, permitted 14 LEAs—Albemarle County, Alexandria City, Fairfax County, Fauquier County, Fluvanna County, Hampton City, Harrisonburg City, Henrico County, Loudoun County, Manassas City, Martinsville City, Richmond City, Spotsylvania County, and Williamsburg-James City County—to offer SES, rather than public school choice, to eligible students in Title I schools in the first year of school improvement.

VI. Schoolwide Eligibility Waiver

1. *Waiver Applicant:* Berkeley County Schools, WV.

• *Provision waived:* Section 1114(a) of the ESEA.

• *Date waiver granted:* June 25, 2008.

• *Description of waiver:* Permits an elementary school to implement a Title I schoolwide program even though fewer than 40 percent of its students are from low-income families.

VII. Title I Within-District Allocation Waiver

1. *Waiver Applicant:* Henry County School District, GA.

• *Provisions waived:* Sections 1113(a) and (b) of the ESEA.

• *Date waiver granted:* April 10, 2008.

• *Description of waiver:* Allows the LEA to skip a newly opening school in order to serve an existing Title I school with a slightly lower poverty rate for one additional year.

VIII. Transferability Waiver

1. *Waiver Applicant:* New York State Department of Education.

• *Provision waived:* Section 6123(a) of the ESEA.

• *Date waiver granted:* August 14, 2008.

• *Description of waiver:* Permits the State to transfer certain Title II, Part A funds for State-level activities to its Title I, Part A administrative reserve.

IX. Local-Flexibility Demonstration Program

1. *Waiver Applicant:* Seattle Public Schools, WA.

• *Provision waived:* Section 6154(a)(1) of the ESEA.

• *Date waiver granted:* September 29, 2008.

• *Description of waiver:* Waives the requirement that precludes the LEA from continuing to implement its local-flex agreement because it failed to make AYP for two consecutive years.

X. Consolidated Grant Restrictions

1. *Waiver Applicant:* American Samoa Department of Education, ASDE.

• *Provision waived:* 34 CFR 76.136 and 76.137.

• *Date waiver granted:* September 26, 2008.

• *Description of waiver:* Provided ASDE the flexibility to use funds under its Fiscal Year 2008 consolidated grant for programs under Title V, Part A of the ESEA.

2. *Waiver Applicant:* Guam Public School Systems, GPSS.

• *Provision waived:* 34 CFR 76.136 and 76.137.

• *Date waiver granted:* September 26, 2008.

• *Description of waiver:* Provided GPSS the flexibility to use funds under its Fiscal Year 2008 consolidated grant for programs under Title V, Part A of the ESEA.

3. *Waiver Applicant:* Commonwealth of the Northern Mariana Islands Public School System, CNMI.

• *Provision waived:* 34 CFR 76.136 and 76.137.

• *Date waiver granted:* September 26, 2008.

• *Description of waiver:* Provided CNMI the flexibility to use funds under its Fiscal Year 2008 consolidated grant for programs under Title V, Part A of the ESEA.

4. *Waiver Applicant:* Virgin Islands Department of Education, VIDE.

• *Provision waived:* 34 CFR 76.136 and 76.137.

• *Date waiver granted:* November 13, 2008.

• *Description of waiver:* Provided VIDE the flexibility to use funds under its Fiscal Year 2008 consolidated grant for programs under Title V, Part A of the ESEA.

XI. Waivers of the Administrative Cost Limitation That Applies to Indian Education Funds

On May 29, 2008, the Department granted the following LEAs waivers of section 7115(d) of the ESEA, which establishes a five percent administrative cost limitation on funds awarded under the Indian Education formula grant program:

• Kenai Peninsula Borough Schools, AK.
• San Carlos Unified School District, AZ.
• Whiteriver Unified School District, AZ.
• Ventura Unified School District, CA.
• Little Axe Public Schools, OK.
• Muskogee Public Schools, OK.
• Oolagah-Talala Public Schools, OK.
• Sulphur Public Schools, OK.
• Tulsa Public Schools, OK.
• Spokane Public Schools (School District 81), WA.

FOR FURTHER INFORMATION CONTACT: Luz Curet, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3W344, Washington, DC 20202. Telephone: (202) 205–3728 or by e-mail: *luz.curet@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 program contact person listed in this section.

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.

Delegation of Authority: The Secretary of Education has delegated authority to Joseph C. Conaty, Director, Academic Improvement and Teacher Quality Programs for the Office of Elementary and Secondary Education, to perform the functions of the Assistant Secretary for Elementary and Secondary Education.

Dated: May 12, 2009.

Joseph C. Conaty,

Director, Academic Improvement and Teacher Quality Programs.

[FR Doc. E9–11413 Filed 5–14–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC09–714–000]

Commission Information Collection Activities (FERC–714); Comment Request; Extension

May 7, 2009.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed information collection and request for comments.

SUMMARY: In compliance with the requirements of section 3506(c)(2)(a) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the specific aspects of the information collection described below.

DATES: Comments in consideration of the collection of information are due July 13, 2009.

ADDRESSES: An example of this collection of information may be obtained from the Commission's Web site (at *http://www.ferc.gov/docs-filing/elibrary.asp*). Comments may be filed either electronically or in paper format, and should refer to Docket No. IC09–714–000. Documents must be prepared in an acceptable filing format and in compliance with the Federal Energy Regulatory Commission submission guidelines at *http://www.ferc.gov/help/submission-guide.asp.*

Comments may be filed electronically via the eFiling link on the Commission's Web site at *www.ferc.gov.* First time users will have to establish a user name and password (*http://www.ferc.gov/docs-filing/eregistration.asp*) before eFiling. The Commission will send an automatic acknowledgement to the sender's e-mail address upon receipt of comments through eFiling.

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

Users interested in receiving automatic notification of activity in this docket may do so through eSubscription (at *http://www.ferc.gov/docs-filing/esubscription.asp*). In addition, all comments and FERC issuances may be viewed, printed or downloaded remotely through FERC's Web site using the ''eLibrary'' link and searching on Docket Number IC09–714. For user assistance, contact FERC Online Support (e-mail at *ferconlinesupport@ferc.gov,* or call toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659).

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by telephone at (202) 502–8663, by fax at (202) 273–0873, and by e-mail at *ellen.brown@ferc.gov.*

SUPPLEMENTARY INFORMATION: FERC–714 (Annual Electric Balancing Authority Area and Planning Area Report (formerly called ''Annual Electric Control and Planning Area Report''), OMB No. 1902–0140) is used by the Commission to implement Sections 4, 202, 207, 210, 211–213, 304, 309 and 311 of the Federal Power Act (FPA) as amended (49 Stat. 838: 16 U.S.C. 791 a–825r), Section 3(4) of Public Utility Regulatory Policies Act of 1978, 26 U.S.C. 2602 and sections 1211, 1221, 1231, 1241 and 1242 of the Energy Policy Act of 2005 (Pub. L. 109–58) (119 Stat. 594). The filing requirements are found at 18 CFR 141.51. The information allows the Commission to analyze power system operations, to estimate the effect of changes in power system operations that result from the installation of a new generating unit or plant, transmission facilities, energy transfers between systems and/or new points of interconnections. The analyses also serve to correlate rates and charges, assess reliability and other operating attributes in regulatory proceedings, monitor market trends and behaviors, and determine the competitive impacts of proposed mergers, acquisitions and dispositions.

ACTION: The Commission is requesting a three-year extension of the current reporting requirements.

Burden Statement: There has been a change in burden due to: (1) An informal, limited survey of respondents in order to obtain improved estimates of both the burden and cost, (2) a change in the number of filers resulting from the formation of regional transmission organizations (and other similar entities) encompassing numerous former Control Areas (Balancing Authority Areas), and (3) the switch to an all-electronic filing in 2007 (from a paper and diskette filing). Public reporting burden for this collection is estimated as follows.

FERC data collection	Number of respondents annually (1)	Number of responses per respondent (2)	Average burden hours per response (3)	Total annual burden hours (1)x(2)x(3)
FERC–714	215	1	[1] 87	[1] 18,705

Note: These figures may not be exact, due to rounding.

The total estimated annual cost burden[1] to respondents is $885,155 (215 respondents × $4,117 per respondent).

The reporting burden includes the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for the purposes of collecting, validating, verifying, processing, maintaining, disclosing and providing information; (3) adjusting the existing ways to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information;

[1] These figures are based on a limited survey of 8 respondents. The average estimated annual burden per respondent (and filing) is 87 hours.

Using the number of hours spent by each specific job title or level, the estimated annual staff cost was calculated based on the nationwide average annual salary for various levels of engineers, found in the Occupational Outlook Handbook (2008–09 Edition) [posted on the Bureau of Labor Statistics Web site at *http://www.bls.gov/oco/ocos027.htm*]. The estimated average annual staff cost for preparing the FERC–714 was $3,603.

The respondents surveyed had additional costs of $514, on average per year. Therefore the total estimated average annual cost per respondent is $4,117.

and (7) transmitting, or otherwise disclosing the information.

The estimate of cost for respondents is based upon salaries for professional and clerical support, as well as direct and indirect overhead costs. Direct costs include all costs directly attributable to providing this information, such as administrative costs and the cost for information technology. Indirect or overhead costs are costs incurred by an organization in support of its mission. These costs apply to activities which benefit the whole organization rather than any one particular function or activity.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11333 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2211–004]

Duke Energy Indiana, Inc.; Notice of Application Tendered for Filing with the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 7, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2211–004.

c. *Date Filed:* April 24, 2009.

d. *Applicant:* Duke Energy Indiana, Inc.

e. *Name of Project:* Markland Hydroelectric Project.

f. *Location:* On the Ohio River in Switzerland County, near the towns of Florence and Vevay, Indiana, and Warsaw, Kentucky. The project affects about 1 acre of federal lands administered by the U.S. Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Tamara Styer, Duke Energy, Mail Code: EC12Y, P.O. Box 1006, Charlotte, NC 28201–1006, (704) 382–0293 or *tsstyer@duke-energy.com.*

i. *FERC Contact:* Dianne Rodman, (202) 502–6077 or *dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* Federal, State, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 23, 2009.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text-only comments, click on ''Quick Comment.''

m. This application is not ready for environmental analysis at this time.

n. The existing Markland Hydroelectric Project consists of a powerhouse integrated into the north end of the U.S. Army Corps of Engineers' (Corps) Markland dam, which was constructed by the Corps between 1959 and 1964. The project has a total installed capacity of 64.8 megawatts (MW) and produces an average annual generation of 350,454 megawatt-hours. All generated power is utilized within the applicant's electric utility system. The project operates in run-of-river mode, has no storage, and only uses flows released by the Corps.

The project consists of the following facilities: (1) A 96-foot-high, 248-foot-wide intake structure, with steel trashrack panels installed along the east side, directing flows to the connected powerhouse; (2) a powerhouse, integral to the Corps' Markland dam, containing three vertical shaft Kaplan turbine/generator units with a total installed capacity of 64.8 MW; (3) a tailrace discharging flows immediately downstream of the dam; (4) a substation about 250 feet north of the powerhouse; (5) an approximately 750-foot-long existing access road; (6) a 9.37-mile-long, 138-kilovolt transmission line in a 100-foot-wide right-of-way extending to Fairview, Indiana; and (7) appurtenant facilities. The applicant is proposing to add a new, approximately 300-foot-long access road, leading to a new parking area for recreation use at the tailrace of the dam.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Indiana State Historic Preservation Officer (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at 800.4.

Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate.

Issue Acceptance or Deficiency Letter and Request for Additional Information.	June 2009.
Issue Scoping Document 1 for comments.	June 2009.
Request Additional Information (if necessary).	September 2009.
Issue Scoping Document 2	September 2009.
Notice of application is ready for environmental analysis.	January 2010.
Notice of the availability of the EA.	June 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11336 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13350–000]

Marine Power & Water, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 7, 2009.

On January 6, 2009, Marine Power & Water, Inc. filed an application, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Colorado River Indian Tribes Irrigation District Hydrokinetic Power Project, located in La Paz County, Arizona. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would be located in an irrigation canal downstream from the Parker Irrigation Diversion Dam on the Colorado River, within the Colorado River Indian Tribe Reservation, 3 miles southwest of the City of Parker, Arizona, and would consist of: (1) One hydrokinetic electrical generating unit, with a total installed capacity of 15 kilowatts, (2) an existing 200-volt primary transmission line at check 19 that interconnects with the Western Area Power Administration, and (3) appurtenant facilities. The electricity generated from the project would be used by the Colorado River Indian Tribe Reservation. The project uses no dam or impoundment.

Applicant Contact: Mr. Ray F. Hofmann, Marine Power & Water, Inc., 26893 Calle Hermosa, Capistrano Beach, California 92624, phone: (949) 481–8331.

FERC Contact: Carolyn Templeton (202) 502–8785.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*. More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13350) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11334 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13360–000]

Hydrodynamics, Inc.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

May 8, 2009.

On January 29, 2009, Hydrodynamics, Inc. filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Ruby River Reservoir Hydroelectric Project, which would be located at the existing Ruby River dam on Ruby River near the town of Alder in Madison County, Montana. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed project would consist of the following:

(1) An existing 846-foot-long, 111-foot-high earthen dam; (2) an existing reservoir with a surface area of 970 acres and a storage capacity of 37,612 acre-feet at the normal water surface elevation of 5,392 feet mean sea level; (3) an existing concrete outlet works tunnel, which would be lined with steel; (4) a new 84-inch-diameter, 180-foot-long steel penstock in the tunnel; (5) a new 84-inch-diameter, 20-foot-long penstock extending from the tunnel to the powerhouse; (6) a new powerhouse containing two generating units with a combined installed capacity of 2.2 megawatts; (7) a new tailrace discharging flows into the Ruby River at the base of the dam; (8) a new substation; (9) a new 15-kilovolt, 2-mile-long transmission line; and (10) appurtenant facilities. The proposed project would have an average annual generation of 10 gigawatt-hours.

Applicant Contact: Ben Singer, Project Manager, Hydrodynamics, Inc., P.O. Box 1136, Bozeman, MT 59771; phone: (406) 587–5086.

FERC Contact: Dianne Rodman, 202–502–6077.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing

applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.* More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13360) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11343 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13356–000]

Slatersville Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 8, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Exemption From Licensing.

b. *Project No.:* P–13356–000.

c. *Date Filed:* January 15, 2009.

d. *Applicant:* Slatersville Hydro, LLC.

e. *Name of Project:* Slatersville Hydroelectric Project.

f. *Location:* On the Branch River in Providence County, Rhode Island. The project would not occupy any land of the United States.

g. *Filed Pursuant to:* Public Utilities Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Applicant Contact:* Michael P. DeFrancesco, 87 Hall Road, Exeter, RI 02822, (401) 742–1968.

i. *FERC Contact:* Tom Dean, (202) 502–6041.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''eFiling'' link.

k. This application has been accepted for filing, but is not ready for environmental analysis at this time.

l. *Description of Project:* The Slatersville Project would consist of: (1) The existing 13-foot-high RI Dam No. 43 consisting of: (a) an existing 175-foot-long spillway with a spillway elevation of 250.7 feet National Geodetic Vertical Datum 1988 (NGVD); and (b) a westerly abutment equipped with two 3.5-foot-wide, 5.7-foot-high sluice gates impounding; (2) the 172-acre Upper Slatersville reservoir leading to; (3) two new 150-foot-long, 4.5-foot-diameter penstocks connecting to; (4) a new powerhouse containing two generating units with a total installed capacity of 360 kilowatts; (5) a new 25-foot-long tailrace discharging water into the Lower Slatersville reservoir; (6) a new 0.5-mile-long, 13.8-kilovolt transmission line; and (7) appurtenant facilities. The project would have an average annual generation of about 1,250 megawatt-hours.

In addition to the new project facilities described above, the project would include reinstalling 1.5- or 2.0-foot-high flashboards on top of RI Dam No. 43.

Project facilities may also include: (1) The existing 6-foot-high RI Dam No. 45 with a 105-foot-long spillway; and (2) the existing 0.3-acre reservoir with a normal water surface elevation of 231.9 feet NGVD located in the bypassed reach between RI Dam No. 43 and the new tailrace.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must: (1) Bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Procedural schedule and final amendments: The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intents to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Scoping Document	June 2009.
Notice of application is ready for environmental analysis.	August 2009.

Notice of the availability of the EA.	January 2010.

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11342 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–126]

Alabama Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 7, 2009.

a. *Type of Application:* Non-project use of project lands and waters.

b. *Project Number:* 2146–126.

c. *Date Filed:* April 24, 2009.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* The proposed non-project use is located on Logan Martin Lake, in Talladega County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Keith E. Bryant, Senior Engineer, Alabama Power Company, 600 18th Street North, Birmingham, AL 35203, (205) 257–1403.

i. *FERC Contact:* Any questions on this notice should be addressed to Jade Alvey at (202) 502–6864.

j. *Deadline for Filing Comments and or Motions:* June 8, 2009.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* Alabama Power Company filed an application seeking Commission authorization to permit Shoreline Real Estate, LLC to install floating boat docks, a concrete boat ramp, and other facilities on project lands along or near the shoreline of the Logan Martin Lake in Section 4, Township 18 South, Range 4 East, Talladega County, Alabama. The new facilities would be used by the owners and residents of the Lincoln Harbor development on lands adjacent to the project. The application is for a total of 15 floating docks, with total boat slips not to exceed 176 slips, and a footprint not to exceed 72,160 square feet. The boat docks would be constructed over the coming years as a total of 952 residential units are constructed and sold in a phased development process. The filing includes maps and descriptions of the areas and of dock and slip configurations, photographs, and environmental and historic considerations. No dredging is proposed. This application was filed after consultation with the appropriate agencies.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field (P–459) to access the document. You may also register Online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 or e-mail *FERCOnlineSupport@ferc.gov*, for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers.

p. *Agency Comments:* Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11335 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP05–82–001]

El Paso Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Gila Compressor Station Removal Project and Request for Comments on Environmental Issues

May 8, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of El Paso Natural Gas Company's (El Paso) request for amended authorization to remove the previously abandoned aboveground facilities at its Gila Compressor Station, in Maricopa County, Arizona. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process we will use to gather input from the public and interested agencies on the project. Your

input will help the Commission staff determine which issues need to be evaluated in the EA. Please note that the scoping period will close on June 8, 2009.

This notice is being sent to Federal, State, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. State and local government representatives are asked to notify their constituents of this planned project and encourage them to comment on their areas of concern.

Summary of the Proposed Project

El Paso has requested an amendment to the Commission's Order of May 5, 2005 which authorized abandonment in place and termination of service for the Gila Compressor Station. Having experienced vandalism and theft at the facility, El Paso proposes to remove all equipment and structures down to the concrete foundations. The facilities which would be removed include: A compressor building; pump house; auxiliary building; machine shop; office building; waste tanks; air receiving tanks; fin fan coolers; sulfuric acid storage tanks; two 1000 barrel (bbl) tanks; electrical and control wiring; station light poles; and all aboveground piping. Miscellaneous liquids (engine oils, coolants, amine, condensate, and hydrocarbons) were previously removed from the Gila Bend Compressor Station when it was abandoned in place.

Salvaged materials would be sold as scrap, or recycled. Other materials would be disposed of in local land fills in accordance with all applicable Federal, State, and local regulations.

The general location of the project facilities is shown in Appendix 1.[1]

If approved, El Paso proposes to accomplish demolition of the facilities in 2009.

Land Requirements

The facilities proposed for demolition comprise 2 acres of El Paso's 155 acre fenced compressor station yard which, except for a portion of about 3.58 acres of Bureau of Land Management administered land just inside the fence line, is owned in fee title by El Paso. All demolition activities would be located on El Paso fee title land.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission staff requests public comments on the scope of the issues to address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

In the EA we[2] will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Land use.
- Water resources, fisheries, and wetlands.
- Cultural resources.
- Vegetation and wildlife.
- Air quality and noise.
- Polychlorinated biphenyl (PCB) contamination.
- Public safety.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to federal, state, and local agencies, public interest groups, interested individuals, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission. To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

With this NOI, we are asking Federal, State, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated the proposal relative to their responsibilities. Additional agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this NOI.

Currently Identified Environmental Issues

We have already identified issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by El Paso. This preliminary list of issues may be changed based on your comments and our analysis.

- The Gila Bend Compressor Station has been assessed as a historically significant component of the energy infrastructure of the Southwestern United States.
- El Paso has identified samples which exceed the method detection limit for PCBs. El Paso proposes to dispose of PCB contaminated material in a Toxic Substances Control Act regulated landfill in accordance with 40 Code of Federal Regulations 761.61.

Public Participation

You can make a difference by providing us with your specific comments or concerns. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before June 8, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number CP05–82–000 with your submission. The docket number can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

[1] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[2] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor,'' which is an official party to the proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in a Commission proceeding by filing a request to intervene. Instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Environmental Mailing List

As described above, we may publish and distribute the EA for public review and comment. If you are interested in receiving an EA, please return the Environmental Mailing List Form (appendix 2). *If you do not return the Environmental Mailing List Form or comment on the project, you will be taken off the mailing list.* All individuals who provide comments will remain on our environmental mailing list for this project.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *http://www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11344 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–60–000]

Dominion Cove Point LNG, LP; Notice of Availability of the Environmental Assessment for the Proposed Pier Reinforcement Project

May 8, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) of the Pier Reinforcement Project proposed by Dominion Cove Point LNG, LP (DCP) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The FERC is the lead agency for the preparation of the EA. The United States Coast Guard (Coast Guard) and the United States Army Corps of Engineers (COE) are cooperating agencies for the development of the EA. A cooperating agency has jurisdiction by law or special expertise with respect to the proposed action and participates in the NEPA analysis.

The EA assesses the potential environmental effects of modifications to DCP's existing pier in the Chesapeake Bay at the Cove Point Liquefied Natural Gas (LNG) terminal in Calvert County, Maryland. The Pier Reinforcement Project would involve the following construction activities:

- Addition of ten new mooring dolphins;
- Reinforcement of eight existing breasting dolphins;
- Walkways to connect the mooring dolphins to the existing pier;
- Replacement of the existing gangway system with an automated gangway;
- Installation of new display boards;
- Upgrading the docking control system to incorporate new quick-release mooring hooks;
- Dredging approximately 120,000 cubic yards of sediment directly adjacent to the pier; and
- Placing the dredged material at a permitted dredged material placement site.

The purpose of the project is to upgrade, expand, and modify the existing pier to accommodate DCP's customers and recent advances in LNG ship technology. The reinforced pier would enable the safe docking, discharge, and departure of vessels capable of carrying cargoes of up to 267,000 cubic meters of LNG. These vessels would be larger than those currently authorized for the Cove Point LNG Terminal and would allow comparable quantities of LNG to be delivered using fewer vessels.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local agencies, public interest groups, interested individuals, newspapers and libraries in the project area, and parties to this proceeding. Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to

avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before June 8, 2009.

For your convenience, there are three methods in which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP09–60–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the Quick Comment feature, which is located on the Commission's internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the eFiling feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to Documents and Filings. eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister*''. You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 3, PJ11.3. Mail your comments promptly, so that they will be received in Washington, DC on or before June 8, 2009.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214). Only intervenors have the right to seek rehearing of the Commission's decision. Further instructions for becoming an intervenor are included in the User's Guide under the ''e-filing'' link on the Commission's Web site (*http://www.ferc.gov*).

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

The COE is also soliciting comments from the public in order to consider and evaluate the impacts of the proposed project to waters of the United States, including jurisdictional wetlands. All comments received by the COE will become a part of the COE's administrative record and will be considered by the COE in evaluating the Department of the Army permit application. You may submit comments directly to the COE. The COE project number is NAB–2008–01241–M05 (200861276 T61277) (Dominion Cove Point LNG/Pier Reinforcement Project). Copies of any written statements expressing concern for aquatic resources may be submitted to: Mrs. Kathy Anderson, Corps of Engineers, CENAB–OP–RMS, P.O. Box 1715, Baltimore, Maryland 21203–1715.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC (3372) or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.* CP09–60). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11339 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL05–55–004; Docket No. EL05–63–006]

City of Holland, MI v. Midwest Independent Transmission System Operator, Inc.; DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.; Notice of Filing

May 7, 2009.

Take notice that on April 30, 2009, The Midwest Independent Transmission System Operator, Inc. submit a refund report, effective April 15, 2009, in compliance with the Commission's May 20, 2008 Order, *City of Holland, Michigan* v. *Midwest Independent Transmission System Operator, Inc. and DTE Energy Trading, Inc.* v. *Midwest Independent Transmission System Operator, Inc.,* 123 FERC 61,187 (2008) (May 20, Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11337 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL03–3–008]

Argus Media, Inc.; Notice of Filing

May 7, 2009.

Take notice that on December 30, 2008, Argus Media, Inc. (Argus) filed a request for the Commission to determine that the methodology for developing price indices contained in Argus North American Natural Gas meets all or substantially all of the requirements set forth in the *Policy Statement on Natural Gas and Electric Price Indices* (Policy Statement).[1] On May 1, 2009, Argus filed a supplement to its initial request.

Any person desiring to intervene or to protest these filings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Monday, May 18, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11331 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

[1] *Policy Statement on Natural Gas and Electric Price Indices,* 104 FERC ¶ 61,121, at P 33 (2003) (*Policy Statement*).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–873–000]

ISO New England, Inc.; Notice of Filing

May 7, 2009.

Take notice that on May 6, 2009, ISO New England, Inc. filed a correction to its March 29, 2009, Internal Market Monitoring Unit filing.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 13, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11332 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–1075–000]

Falcon Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

May 8, 2009.

This is a supplemental notice in the above-referenced proceeding of Falcon Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is May 28, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC, 20426.

The filings in the above-referenced proceeding are accessible in the

Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11341 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[ER08–1588–000; EL09–6–000]

Notice of Motion to Brief the Commission

May 8, 2009.

Kentucky Utilities Company ..... Docket No. ER08–1588–000.
Frankfort Electric and Water Plant Board ..... Docket No. EL09–6–000.
City of Barbourville, Kentucky
City of Bardstown, Kentucky
City of Bardwell, Kentucky
City of Benham, Kentucky
City of Berea, Kentucky
City of Corbin, Kentucky
City of Falmouth, Kentucky
City of Madisonville, Kentucky
City of Nicholasville, Kentucky
City of Paris, Kentucky
City of Providence, Kentucky
Complainants.
v.
Kentucky Utilities Company
Respondent.

On May 6, 2009, Kentucky Utilities Company and the Kentucky Municipals [1] submitted a joint Motion to Brief the Commission on an Outstanding Issue in the above-captioned proceeding. The Commission provides notice that it will allow the parties to file briefs with the Commission. Initial briefs are due to the Commission by June 1, 2009; reply briefs are due to the Commission by July 1, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11340 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–25–000]

Crosstex North Texas Pipeline, L.P.; Notice of Rate Election

May 8, 2009.

Take notice that on April 17, 2009, Crosstex North Texas Pipeline, L.P. (CNTP) filed pursuant to section 284.123(b)(1)(ii) of the Commission's regulations. CNTP proposes to utilize its Texas Railroad Commission city-gate transportation rate for service pursuant to section 311 of the Natural Gas Act as more fully described in the petition.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, May 19, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11338 Filed 5–14–09; 8:45 am]

BILLING CODE 6717–01–P

[1] The Kentucky Municipals are the Frankfort Electric and Water Plant Board, and the Cities of Barbourville, Bardstown, Bardwell, Benham, Berea, Corbin, Falmouth, Madisonville, Nicholasville, Paris, and Providence, Kentucky.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0912, FRL–8904–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; 2009 Hazardous Waste Report, EPA ICR Number 0976.14, OMB Control Number 2050–0024

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November

30, 2009. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 14, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2008–0912, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* RCRA Docket (2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.
- *Hand Delivery:* 1301 Constitution Ave., NW., Room 3334, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2008–0912. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Peggy Vyas, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–5477; fax number: 703–308–8433; e-mail address: *vyas.peggy@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0912, which is available for online viewing at *www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for RCRA Docket is (202) 566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are Business and State, Local, or Tribal Governments.

Title: 2009 Hazardous Waste Report.

ICR numbers: EPA ICR No. 0976.14, OMB Control No. 2050–0024.

ICR status: This ICR is currently scheduled to expire on November 30, 2009. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: This ICR renews an ongoing information collection from hazardous waste generators and hazardous waste treatment, storage, or disposal facilities. This collection is done on a two-year cycle as required by Sections 3002 and 3004 of RCRA. The information is

collected via a mechanism known as the Hazardous Waste Report for the required reporting year [EPA Form 8700–13 A/B](also known as the Biennial Report). Both RCRA Sections 3002 and 3004 require EPA to establish standards for recordkeeping and reporting of hazardous waste generation and management. Section 3002 applies to hazardous waste generators and Section 3004 applies to hazardous waste treatment, storage, and disposal facilities. The implementing regulations are found at 40 CFR 262.40(b) and (d); 262.41(a)(1)–(5), (a)(8), and (b); 264.75(a)–(e) and (j); 265.75(a)–(e) and (j); and 270.30(l)(9). This is mandatory reporting by the respondents.

This ICR renewal includes several changes to the RCRA Subtitle C Site Identification Form (EPA Form 8700–12) in order to implement two new final rules: The *Revisions to the Definition of Solid Waste*, promulgated on October 30, 2008 (73 FR 64668); and the *Standards Applicable to Generators of Hazardous Waste; Alternative Requirements for Hazardous Waste Determination and Accumulation of Unwanted Material at Laboratories Owned by Colleges and Universities and Other Eligible Academic Entities Formally Affiliated With Colleges and Universities*, promulgated on December 1, 2008 (73 FR 72912).

Burden Statement: The reporting burden is estimated to average 16.4 hours per respondent, and includes time for reviewing instructions, gathering data, completing and reviewing the forms, and submitting the report. The record keeping requirement is estimated to average 2.3 hours per response and includes the time for filing and storing the Biennial Report submission for three years.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 13,000.

Frequency of response: Once.

Estimated total average number of responses for each respondent: 50.

Estimated total annual burden hours: 700,000 hours.

Estimated total annual costs: $70,000 annualized capital or O&M costs.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: February 26, 2009.

Matt Hale,

Director, Office of Resource Conservation and Recovery.

[FR Doc. E9–11410 Filed 5–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8593–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 17, 2009 (74 FR 17860).

Draft EISs

EIS No. 20090052, ERP No. D–NRS–H38001–IA, Clarke County Water Supply Project, To Construct a Multiple-Purpose Structure that Provides for Rural Water Supply and Water Based Recreational Opportunities, Clarke County, IA.

Summary: EPA expressed environmental concerns about stream and wetland impacts and mitigation. Rating EC2.

EIS No. 20090064, ERP No. D–FTA–K54031–CA, Silicon Valley Rapid Transit Corridor Project, Proposes to Construct an Extension of the Bay Area Rapid Transit (BART) Rail System from Warm Spring Station in Fremont to Santa Clara County, CA.

Summary: EPA expressed environmental concerns about impacts to water quality, noise impacts, and environmental justice. EPA also recommended that the project sponsors ensure coordination with other transit service in the area. Rating EC2.

EIS No. 20090076, ERP No. D–SFW–K91016–CA, Paiute Cutthroat Trout Restoration Project, Eradication of Non-Native Trout Species from 11 Stream Miles of Silver King Creek, Alpine County, CA.

Summary: EPA expressed concerns about the environmental impacts of piperonyl butoxide, and recommended further consideration of physical treatment combined with chemical treatment options. Rating EC2.

EIS No. 20090082, ERP No. D–AFS–K65359–CA, Salt Timber Harvest and Fuel Hazard Reduction Project, Proposing Vegetation Management in the Salt Creek Watershed, South Fork Management Unit, Hayfork Ranger District, Shasta-Trinity National Forest, Trinity County, CA.

Summary: EPA expressed environmental concerns about the treatment prescriptions, naturally occurring asbestos, air quality, and climate change. Rating EC2.

Final EISs

EIS No. 20090041, ERP No. F–TVA–E65073–IN, Watts Bar Reservoir Land Management Plan, Amend and Update the 2005 Plan, Guide Land Use Approvals, Private Water Use Facility, and Resource Management Decisions, Loudon, Meigs, Rhea and Roane Counties, TN.

Summary: EPA continues to have environmental concerns because the preferred alternative Modified B is not as environmental protective as the Modified C alternative.

EIS No. 20090073, ERP No. F–USN–D11044–00, Virginia Capes (VACAPES) Range Complex, Proposed action is to Support and Conduct Current and Emerging Training and RDT & E Operations, Chesapeake Bay, DE, MD, VA and NC.

Summary: EPA expressed environmental concerns about the

deposition of expended training materials into the marine environment and its potential impact over time.

EIS No. 20090074, ERP No. F–FAA–F51051–OH, Port Columbus International Airport/(CMH) Project, Replacement of Runway 10R/28L, Development of a New Passenger Terminal and other Associated Airport Projects, Funding, City of Columbus, OH.

Summary: EPA continues to have environmental concerns about PM2.5 emissions, and how they will be minimized.

EIS No. 20090081, ERP No. F–AFS–L65559–OR, BLT Project, Proposed Vegetation Management Activities, Crescent Ranger District, Deschutes National Forest, Deschutes County, OR.

Summary: EPA does not object to the proposed action.

EIS No. 20090089, ERP No. F–AFS–K65338–AZ, Warm Fire Recovery Project, Removal of Fire-Killed Trees Reforestation, Fuel Reduction and Road Reconstruction of Wildland Fire Burn Portion, Coconino County, AZ.

Summary: EPA continues to have environmental concerns about potential impacts to water resources and wildlife habitat from erosion.

EIS No. 20090093, ERP No. F–FHW–H40193–IA, I–29 Improvements in Sioux City, Construction from Burlington Northern Santa Fe Rail Road (BNSF) Bridge over the Missouri River to Existing Hamilton Boulevard Interchange, Woodbury County, IA.

Summary: While EPA does not object to the proposed action, it requested clarification of water and sanitary sewer line relocation and abandonment issues.

EIS No. 20090096, ERP No. FS–COE–G34043–LA, Inner Harbor Navigation Canal (IHNC) Lock Replacement Project, Proposal for Relieving Navigation Traffic Congestion Associated with IHNC Lock, Located between the St. Claude Avenue and North Claibone Avenue Bridge, Orleans, LA.

Summary: EPA does not object to the preferred alternative.

EIS No. 20090103, ERP No. FS–NOA–K91008–00, Amendment 18 to the Fishery Management Plan, Pelagic Fisheries of the Western Pacific Region, Management Modifications for the Hawaii-based Shallow-set Longline Swordfish Fishery, Proposal to Remove Effort Limits, Eliminate the Set Certificate Program and Implement New Sea Turtle Interaction Caps.

Summary: EPA does not object to the proposed project, but suggests that the conservation recommendations outlined in the Biological Opinion be included in the Record of Decision.

Dated: May 12, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–11398 Filed 5–14–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8593–4]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information, (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements filed 05/04/2009 through 05/08/2009 pursuant to 40 CFR 1506.9.

EIS No. 20090150, Revised Draft EIS, FHW, IN, I–69 Evansville to Indianapolis, Indiana Project, Section 2, Revised to Update the Stream Impacts, Oakland City to Washington, (IN–64 to US 50), Gibson, Pike and Daviess Counties, IN, Comment Period Ends: 06/29/2009, Contact: Janice Osadczuk, 317–226–7486.

EIS No. 20090151, Draft EIS, NPS, CA, Prisoners Harbor Coastal Wetland Restoration Project, Proposes to Restore a Functional, Self-Sustaining Ecosystem at a Coastal Wetland Site, Channel Islands National Park, Santa Cruz Island, Santa Barbara County, CA, Comment Period Ends: 07/13/2009, Contact: Paula Power, 805–658–5784.

EIS No. 20090152, Draft EIS, BLM, UT, Mona to Oquirrh Transmission Corridor Project and Draft Pong Express Resource Management Plan Amendment, Construction, Operation, Maintenance and Decommissioning a Double-Circuit 500/345 Kilovolt (Kv) Transmission Line, Right-of-Way Grant, Rocky Mountain Power, Juab, Salt Lake, Tooele and Utah Counties, UT, Comment Period Ends: 08/03/2009, Contact: Mike Nelson, 801–977–4300.

Dated: May 12, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–11395 Filed 5–14–09; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 114]

Agency Information Collection Activities: Proposed Collection; Comment Request, Marketing Fax Back Response Form

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The Marketing Fax Back Response Form will be used to collect basic trade information about United States companies. This information will be provided to the Export-Import Bank's finance consultants nationwide to assist in providing counsel to exporters.

DATES: Comments must be received on or before July 14, 2009 to be considered.

ADDRESSES: Direct all comments and requests for additional information to Stephen Maroon, Export-Import Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3901, or *stephen.maroon@exim.gov.*

SUPPLEMENTARY INFORMATION:

Title and Form Number: Marketing Fax Back Response Form EIB 05–01.

OMB Number: 3048–.

Type of Review: Regular.

Need and Use: This form will provide basic trade information about U.S. Companies and will provide the Export-Import Bank's trade finance consultants nationwide the ability to provide counsel to exporters.

Affected Public: The form affects entities involved in the export of U.S. goods and services.

Estimated Annual Respondents: 1,500.

Estimated Time per Respondent: 5 minutes.

Estimated Annual Burden: 125 hours.

Frequency of Reporting or Use: Once.

BILLING CODE 6690–01–P

Fax Response Form

Export-Import Bank of the United States

To: **Marketing Team** **Fax to:**

202-565-3723

(you may tape business card here)

Name:
Title:
Company:
Address:
City: (If CA, please specify county)
State & Zip:
Tel:
Fax:
E-mail: Web Site:

___ Yes, I would also like a FREE trade consultation to help increase our company's international sales.

Ex-Im Bank has trade finance consultants and partners in your region to assist you with your export challenges. *You may be assured that all information will be treated as business confidential to the extent provided by federal law.* Check us out at www.exim.gov. Thank you.

Please contact me. I am interested in:

Extending credit to our foreign buyers and protecting against nonpayment
Obtaining sufficient working capital
Assisting our buyers to obtain term financing for capital goods or services

My company is a:	Manufacturer	Wholesaler / Distributor	Service Provider
My company is:	Women-Owned	Minority-Owned	Environment-Related

My company has _____ employees (including parent and affiliates).

* We export some goods that have at least 50% U.S. content (i.e., based on product cost, including parts and/or labor).

My company currently exports the following products:

_____
_____
_____
_____
_____
_____

My company has _____ employees (including parent and affiliates).

* We export some goods that have at least 50% U.S. content (i.e., based on product cost, including parts and/or labor).

My company currently exports the following products:

_____
_____
_____
_____
_____
_____

* My company currently exports to the following countries (please list individual countries):

_____
_____
_____
_____
_____
_____

* We provide the following payment terms to our foreign buyers:

Cash in Advance
Open Account - Number of days: _____
Letters of Credit
Credit Card
Other: please specify _____

My company's annual export sales volume is: $ _____ (specify thousands or millions)

My company's primary bank is: _____

*** Information required**

EIB 05-01 Rev. April 28, 2009

Dated: May 7, 2009.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. E9–11406 Filed 5–14–09; 8:45 am]

BILLING CODE 6690–01–C

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of Open Special Meeting of the Advisory Committee of the Export-Import Bank of the United States (Ex-Im Bank)

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank of the United States to Congress.

DATES: *Time and Place:* Wednesday, May 27, 2009 from 9:30 a.m. to 3 p.m. The meeting will be held at Ex-Im Bank in the Main Conference Room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

Agenda: Agenda items include a focus on the congressionally mandated Competitiveness Report, which focuses on how Ex-Im Bank's programs compared with their major G–7 ECA counterparts during 2008.

Public Participation: The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If you plan to attend, a photo ID must be presented at the guard's desk as part of the clearance process into the building, and you may contact Susan Houser to be placed on an attendee list. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 25, 2009, Susan Houser, Room 1273, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 565–3232 or TDD (202) 565–3377.

Further Information: For further information, contact Susan Houser, Room 1273, 811 Vermont Ave., NW., Washington, DC 20571, (202) 565–3232.

Kamil P. Cook,

General Counsel (Acting).

[FR Doc. E9–11327 Filed 5–14–09; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY: *Background.* Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the Paperwork Reduction Act Submission, supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Acting Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Final approval under OMB delegated authority of the extension for three years, without revision, of the following reports:

1. *Report title:* Recordkeeping Requirements Associated With Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y.

Agency form number: FR H–4.

OMB control number: 7100–0250.

Frequency: Event-generated.

Reporters: State Member Banks (SMBs) and nonbank subsidiaries of Bank Holding Companies (BHCs).

Annual reporting hours: SMBs, 35,120 hours; nonbank subsidiaries of BHCs, 59,823 hours.

Estimated average hours per response: 0.25 hours.

Number of respondents: 1,490.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 3339). Further, the Board has the authority to collect information, including appraisals, during the examination of a SMB (12 U.S.C. 248(a)) and a BHC (12 U.S.C. section 1844(c)). Such documents would generally be exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C 552(b)(4) and (b)(8)). Since the Federal Reserve does not collect this information, no issue of confidentiality under FOIA arises.

Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires SMBs and BHCs with credit extending subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. There is no formal reporting form.

2. *Report title:* Recordkeeping Requirements Associated With Changes in Foreign Investments (Made Pursuant to Regulation K).

Agency form number: FR 2064.

OMB control number: 7100–0109.

Frequency: On-occasion.

Reporters: State member banks (SMBs), Edge and agreement corporations, and bank holding companies (BHCs).

Annual reporting hours: 320 hours.

Estimated average hours per response: 2 hours.

Number of respondents: 40.

Small businesses are not affected.

General description of report: The recordkeeping requirements of this information collection are mandatory (Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); Sections 7 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108(a)); Section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and Regulation K (12 CFR 211.8(c)). Since the Federal Reserve does not collect any records, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. FOIA will only be implicated if the Board's examiners retain a copy of the records in their examination or supervision of the institution, and would be exempt from disclosure pursuant to FOIA (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: Internationally active U.S. banking organizations are expected to maintain adequate internal records to allow examiners to review for compliance with the investment provisions of Regulation K. For each investment made under Subpart A of Regulation K, records should be maintained regarding the type of investment, for example, equity (voting shares, nonvoting shares, partnerships, interests conferring ownership rights, participating loans), binding commitments, capital contributions, and subordinated debt; the amount of the investment; the percentage ownership; activities conducted by the company and the legal authority for such activities; and whether the investment

was made under general consent, prior notice, or specific consent authority. With respect to investments made under general consent authority, information also must be maintained that demonstrates compliance with the various limits set out in Section 211.9 of Regulation K.

3. *Report titles:* Request for Proposal (RFP) and Request for Price Quotations (RFPQ).

Agency form numbers: RFP/RFPQ.

OMB control number: 7100–0180.

Frequency: On-occasion.

Reporters: Vendors and suppliers.

Annual reporting hours: RFP, 7,500 hours; and RFPQ, 1,600 hours.

Estimated average hours per response: RFP, 50 hours; and RFPQ, 2 hours.

Number of respondents: RFP, 150; and RFPQ, 800.

Small businesses are affected.

General description of report: This information collection is required to obtain a benefit (12 U.S.C. 243, 244, and 248(l)). The information obtained in evaluating a contract bid or price quotation is not regarded as confidential unless offeror requests confidentiality. The Board staff must review each request received under the Freedom of Information Act (FOIA; 5 U.S.C. 552(b)(4)) to determine if the information may be withheld pursuant to applicable FOIA exemptions.

Abstract: The Federal Reserve uses the RFP and the RFPQ as needed to obtain competitive bids and contracts submitted by vendors (offerors). Depending upon the goods and services for which the Federal Reserve is seeking bids, the offeror is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but the means of performing a particular service and a description of the qualification of the staff of the offeror who will perform the service (RFP). This information is used to analyze the proposals and select the offer providing the best value.

4. *Report title:* Notice Requirements in Connection with Regulation W (12 CFR Part 223 Transactions Between Member Banks and Their Affiliates).

Agency form number: Reg W.

OMB control number: 7100–0304.

Frequency: Event-generated.

Reporters: Insured depository institutions and uninsured member banks.

Annual reporting hours: 220 hours.

Estimated average hours per response: Loan participation renewal notice, 2 hours; Acquisition notice, 6 hours; Internal corporate reorganization transactions notice, 6 hours; and Section 23A additional exemption notice, 10 hours.

Number of respondents: 28.

Small businesses are not affected.

General description of report: This information collection is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c(f) and 371c–1(e)). Confidential and proprietary information collected for the purposes of the Loan Participation Renewal notice 12 CFR 223.15(b)(4) may be protected under the authority of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)). Section (b)(4) exempts information deemed competitively sensitive from disclosure and Section (b)(8) exempts information ''contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.''

Abstract: On December 12, 2002, the Federal Reserve published a **Federal Register** notice [1] adopting Reg W to implement sections 23A and 23B. The Regulation was effective April 1, 2003. The Board issued Reg W for several reasons. First, the regulatory framework established by the Gramm-Leach-Bliley Act [2] emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. Second, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, ensured that the statute is consistently interpreted and applied, and minimized burden on banking organizations to the extent consistent with the statute's goals. Third, issuing a comprehensive rule allowed the public an opportunity to comment on Federal Reserve interpretations of sections 23A and 23B.

Current Actions: On March 4, 2009, the Federal Reserve published a notice in the **Federal Register** (74 FR 9401) requesting public comment for 60 days on the extension, without revision, of the FR H–4, FR 2064, RFP/RFPQ, and Reg W. The comment period for this notice expired on May 4, 2009. The Federal Reserve did not receive any comments.

Board of Governors of the Federal Reserve System, May 11, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–11355 Filed 5–14–09; 8:45 am]

BILLING CODE 6210–01–P

[1] (67 FR 76603).

[2] Public Law No. 106–102, 113 Stat. 1338 (1999).

FEDERAL MARITIME COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: May 20, 2009—1:30 p.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: A portion of the meeting will be in Open Session and the remainder of the meeting will be in Closed Session.

MATTERS TO BE CONSIDERED:

Open Session

1. Docket No. 02–15 Passenger Vessel Financial Responsibility—Request of Commissioner Brennan.
2. FMC Agreement No. 012067: U.S. Supplemental Agreement to HLC Agreement.
3. Public Access to Number and Type of Filings in FMC's SERVCON System.
4. FY 2009 Budget Status Update.

Closed Session

1. Docket No. 08–07: Petition of Olympus Growth Fund III, L.P. and Olympus Executive Fund, L.P. for Declaratory Order, Rulemaking or Other Relief.
2. Marine Terminal Agreements Exemption at 46 CFR 535.308.
3. Proof of Financial Responsibility for Windstar Sail Cruises Limited.
4. Investigative and Enforcement Matters.
5. Internal Administrative Practices and Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–11529 Filed 5–13–09; 4:15 pm]

BILLING CODE 6730–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Appointments to the Medicare Payment Advisory Commission

AGENCY: Government Accountability Office (GAO).

ACTION: Notice of appointments.

SUMMARY: The Balanced Budget Act of 1997 established the Medicare Payment Advisory Commission (MedPAC) and gave the Comptroller General responsibility for appointing its members. This notice announces the appointment of two new members and the reappointments of five existing members.

DATES: Appointments are effective May 1, 2009.

ADDRESSES:
GAO: 441 G Street, NW., Washington, DC 20548.
MedPAC: 601 New Jersey Avenue, NW., Suite 9000, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT:
GAO: Office of Public Affairs, (202) 512–4800.
MedPAC: Mark E. Mifier, PhD, (202) 220–3700.

SUPPLEMENTARY INFORMATION: To fill this year's vacancies I am announcing the following:

Newly appointed members are Robert A. Berenson, M.D., F.A.C.P., senior fellow at the Urban Institute, and Herb B. Kuhn, an independent health care consultant specializing in Medicare and Medicaid issues.

Reappointed members are Mitra Behroozi, J.D., executive director of 1199 SEIU Benefit and Pension Funds; Karen R. Borman, M.D., professor of surgery at the University of Central Florida College of Medicine; Ronald D. Castellanos, M.D., urologist at Southwest Florida Urologic Associates; Glenn M. Hackbarth, J.D., (chair); and Bruce Stuart, PhD, a professor and executive director of the Peter Lamy Center on Drug Therapy and Aging at the University of Maryland Baltimore.

(Sec. 4022, Pub. L. 105–33, 111 Stat. 251, 350)

Gene L. Dodardo,

Acting Comptroller General of the United States.

[FR Doc. E9–11403 Filed 5–14–09; 8:45 am]

BILLING CODE 1610–02–M

GENERAL SERVICES ADMINISTRATION

[OMB Control NO. 3090–00283]

Office of the Chief Information Officer; Information Collection; Temporary Contractor Information Worksheet

AGENCY: Office of Enterprise Solutions (IA), Office of the Chief Information Officer (OCIO), General Services Administration (GSA).

ACTION: Information Collection Activities: Proposed Collection; Comment Request.

SUMMARY: In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the General Services Administration invites the general public and Federal agencies to comment on a new information collection request for the collection of personal data to authorize and initiate investigation requests for GSA temporary contractors. [xx] GSA requires OMB approval for this collection to ensure that contractors meet eligibility requirements. The approval is critical for GSA to meet the anticipated increase in number of temporary contractors as a result of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5). In the **Federal Register** Notice published at 74 FR 7439 on February 17, 2009, the portion that references the GSA Form 176T will be withdrawn in a subsequent **Federal Register** Notice.]

Public comments are particularly invited on: Whether this collection of information is necessary 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.

DATES: Submit comments on or before: July 14, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. William Erwin, [xx] Program Manager, HSPD–12 Program Management Office, GSA, 1800 F Street, NW., Washington, DC 20405; or telephone (202) 501–0758. Please cite OMB Control No. 3090–00XX, Temporary Contractor Information Worksheet. The form can be downloaded from the GSA Forms Library at *http://www.gsa.gov/forms.* Type GSA850 in the form search field.

ADDRESSES: Comments may be submitted via *http://www.regulations.gov*—a Federal E–Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the **Federal Register** and that are open for comment. Simply type a key term in the information collection title such as ''temporary contractor information worksheet'' in quotes in the Comment or Submission search box, click Go, and follow the instructions for submitting comments. Comments received by the date specified above will be included as part of the official record.

Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Regulatory Secretariat (VPR), General Services Administration, Room 4041, 1800 F Street, NW., Washington, DC 20405. Please cite Temporary Contractor Information Worksheet in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The U.S. Government conducts criminal checks to establish that applicants or incumbents working for the Government under contract may have unescorted access to GSA-controlled facilities. GSA will use the Temporary Contractor Information Worksheet and the FBI Form FD–258 Fingerprint Card to conduct an FBI National Criminal History Check (NCHC) for each temporary contractor (working on contract for six (6) months or less and require physical access only) to determine eligibility to work on GSA contracts including those awarded under the American Recovery and Reinvestment Act of 2009 (Public Law 111–5). GSA is anticipating a large influx in temporary contractors due to the American Recovery and Reinvestment Act of 2009.

The Office of Management and Budget (OMB) Guidance M–05–24 for Homeland Security Presidential Directive (HSPD) 12 authorizes Federal departments and agencies to ensure that temporary contractors have limited/controlled access to facilities and information systems. GSA Directive CIO P 2181.1 Homeland Security Presidential Directive-12 Personal Identity Verification and Credentialing (available at *http://www.gsa.gov/hspd12*) states that GSA temporary contractors must undergo a minimum of an FBI National Criminal History Check (NCHC) to receive unescorted physical access. Temporary contractors' Social Security Number is needed to keep records accurate, because other people may have the same name and birth date. Executive Order 9397 Numbering System for Federal Accounts Relating to Individual Persons also allows Federal agencies to use this number to help identify individuals in agency records. GSA describes how information will be maintained in the Privacy Act system of record notice published in the **Federal Register** at 73 FR 35690 on June 24, 2008.

This is a request to collect new information.

B. Annual Reporting Burden

Respondents: *24,480.*
Responses per Respondent: *1.*
Hours per Response: *.25.*
Total Burden Hours: *6,120.*

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite Temporary Contractor

Information Worksheet in all correspondence. The form can be downloaded from the GSA Forms Library at *http://www.gsa.gov/forms.* Type GSA850 in the form search field.

Dated: May 7, 2009.

Casey Coleman,

Chief Information Officer, U.S. General Services Administration.

[FR Doc. E9–11315 Filed 5–14–09; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0067]

Federal Acquisition Regulation; Submission for OMB Review; Incentive Contracts

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), the Regulatory 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 Incentive Contracts. A request for public comments was published in the **Federal Register** at 73 FR 74712, on December 9, 2008. No public comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; 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 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 June 15, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: General Services Administration (GSA) Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and send a copy to the Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Blankenship, Procurement Analyst, Contract Policy Division, GSA (202) 501–1900.

SUPPLEMENTARY INFORMATION:

A. Purpose

Incentive contracts are normally used when a firm fixed-price contract is not appropriate and the required supplies or services can be acquired at lower costs, and sometimes with improved delivery or technical performance, by relating the amount of profit or fee payable under the contract to the contractor's performance.

The information required periodically from the contractor, such as cost of work already performed, estimated costs of further performance necessary to complete all work, total contract price for supplies or services accepted by the Government for which final prices have been established, and estimated costs allocable to supplies or services accepted by the Government and for which final prices have not been established, is needed to negotiate the final prices of incentive-related items and services.

The contracting officer evaluates the information received to determine the contractor's performance in meeting the incentive target and the appropriate price revision, if any, for the items or services.

B. Annual Reporting Burden

Respondents: *3,000.*

Responses Per Respondent: *1.*

Annual Responses: *3,000.*

Hours per Response: *1.*

Total Burden Hours: *3,000.*

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0067, Incentive Contracts, in all correspondence.

Dated: May 11, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–11316 Filed 5–14–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Hospital Preparedness Program (HPP)

AGENCY: Office of the Assistant Secretary for Preparedness and Response, HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the Secretary's decision to require Hospital Preparedness Program [HPP] cooperative agreement recipients to contribute non-Federal matching funds starting with the FY 2009 funding cycle and each year thereafter. The amount of the cost sharing requirement in FY 2009 will be five percent of the award amount and in FY 2010 and each year thereafter the amount of match will be ten percent of the award amount.

FOR FURTHER INFORMATION CONTACT: Robert Dugas, Team Leader, Hospital Preparedness Program, 202–245–0732.

SUPPLEMENTARY INFORMATION: Authorized by section 319C–2 of the Public Health Service (PHS) Act, as amended by the Pandemic and All-Hazards Preparedness Act (PAHPA) (Pub. L. 109–417), the HPP is a cooperative agreement program funded and administered by the Assistant Secretary for Preparedness and Response (ASPR). Its purpose is to improve surge capacity and enhance community and hospital preparedness for public health emergencies. Currently there are 62 awardees comprised of the 50 States; the District of Columbia; the three metropolitan areas of New York City, Los Angeles County and Chicago; the Commonwealths of Puerto Rico and the Northern Mariana Islands; the territories of American Samoa, Guam and the U.S. Virgin Islands; the Federated States of Micronesia; and the Republics of Palau and the Marshall Islands.

Since the inception of the program in 2002, awardees have received funding through a statutory formula that employs a base allocation with an adjustment for population. PAHPA amended section 319C–1 and 319C–2 of the PHS Act to add certain accountability provisions.

Consistent with those accountability provisions, a notice appeared in the **Federal Register** on May 16, 2008, (73

FR 28471–72) soliciting public comments on a proposal to introduce a cost sharing requirement for the HPP program. Twenty-eight comments were received from hospitals, hospital associations, State Health Officials, and professional organizations. The comments received included concerns about finding the resources needed to cost share, additional administrative recordkeeping related to cost sharing, and overall decreased participation in the HPP. In response, HHS believes the concerns that were raised about awardees finding the resources needed to cost share, additional administrative recordkeeping, and a potential for decreased participation in the HPP are outweighed by the benefits a cost sharing requirement will bring to HPP. The cost sharing requirement will be a concrete way of solidifying collaboration between States and the Federal government in assuring this program will achieve enhanced sustainability in healthcare system preparedness during and after the project period has ended.

Thus, HPP cooperative agreement recipients will be required to contribute non-Federal matching funds starting with the FY 2009 funding cycle and each year thereafter. Awardees will be required to make available, either directly or through donations from public or private entities, non-Federal contributions in an amount equal to five percent of the award amount in FY 2009 and ten percent of the award amount in FY 2010 and each successive year for the duration of the program. Non-Federal contributions will be provided directly or through donations from public or private entities and may be in cash or in kind, fairly evaluated, including plant, equipment or services. Amounts provided by the Federal government, or services assisted or subsidized to any significant extent by the Federal government, may not be included in determining the amount of such non-Federal contributions.

The cost sharing requirement will apply to the entire award amount received by the awardee from the U.S. Department of Health and Human Services through the HPP.

The cost sharing requirement will be enforced as a term and condition of the HPP award.

Dated: May 8, 2009.

William C. Vanderwagen,

Assistant Secretary for Preparedness and Response, U.S. Department of Health and Human Services.

[FR Doc. E9–11307 Filed 5–14–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–276, CMS–43, CMS–1763, CMS–R–194, CMS–R–232, and CMS–R–296]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Prepaid Health Plan Cost Report; *Use:* Health Maintenance Organizations and Competitive Medical Plans (HMO/CMPs) contracting with the Secretary under Section 1876 of the Social Security Act are required to submit a budget and enrollment forecast, four quarterly reports and a final certified cost report. Health Care Prepayment Plans (HCPPs) contracting with the Secretary under Section 1833 of the Social Security Act are required to submit a budget and enrollment forecast, mid-year report, and final cost report. An HMO/CMP is a health care delivery system that furnishes directly or arranges for the delivery of the full spectrum of health services to an enrolled population. A HCPP is a health care delivery system that furnishes directly or arranges for the delivery of certain physician and diagnostics services up to the full spectrum of non-provider Part B health services to an enrolled population. These reports will be used to establish the reasonable cost of delivering covered services furnished to Medicare enrollees by an HMO/CMP or HCPP.; Form Numbers: CMS–276 (OMB #: 0938–0165); *Frequency:* Recordkeeping, Reporting—Quarterly and Annually; Affected Public: Business or other for-profit; *Number of Respondents:* 35; *Total Annual Responses:* 128; *Total Annual Hours:* 5,285. (For policy questions regarding this collection contact Temeshia Johnson at 410–786–8692. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease: *Use:* Effective July 1, 1973, individuals with End Stage Renal Disease (ESRD) became entitled to Medicare. Because this entitlement has a different set of requirements, the existing applications for Medicare were not sufficient to capture the information needed to determine Medicare entitlement under the ESRD provisions of the law. The Application for Hospital Insurance Benefits for Individuals with End Stage Renal Disease, was designed to capture all the information needed to make a Medicare entitlement determination; Form Numbers: CMS–43 (OMB #: 0938–0800; *Frequency:* Reporting—Once; Affected Public: Individuals or households; *Number of Respondents:* 60,000; *Total Annual Responses:* 60,000; *Total Annual Hours:* 25989. (For policy questions regarding this collection contact Naomi Rappaport at 410–786–2175. For all other issues call 410–786–1326.)

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Request for Termination of Premium Hospital and/or Supplementary Medical Insurance: *Use:* The Social Security Act (the Act) allows a Medicare enrollee to voluntarily terminate Supplementary Medical Insurance (Part B) and/or the premium Hospital Insurance (premium—Part A) coverage by filing a written request with CMS or the Social Security Administration (SSA). The Act also stipulates when coverage will end based upon the date the request was filed. Because Medicare is recognized as a valuable protection against the high cost of medical and hospital bills, when an individual wishes to voluntarily terminate Part B and/or premium Part A, CMS and SSA requests the reason that an individual wishes to terminate coverage to ensure that the individual understands the ramifications of the decision. The Request for Termination of Premium Hospital and/or

Supplementary Medical Insurance, provides a standardized form to satisfy the requirements of law as well as allowing both agencies to protect the individual from an inappropriate decision; Form Numbers: CMS–1763 (OMB #: 0938–0025; *Frequency:* Reporting—Once; Affected Public: Individuals or households; *Number of Respondents:* 14,000; *Total Annual Responses:* 14,000; *Total Annual Hours:* 5,831. (For policy questions regarding this collection contact Naomi Rappaport at 410–786–2175. For all other issues call 410–786–1326.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment Procedures and Criteria and Supporting Regulations in 42 CFR 412.106: *Use:* Section 1886(d)(5)(F) of the Social Security Act established the Medicare disproportionate share adjustment (DSH) for hospitals, which provides additional payment to hospitals that serve a disproportionate share of the indigent patient population. This payment is an add-on to the set amount per case CMS pays to hospitals under the Medicare Inpatient Prospective Payment System (IPPS).

Under current regulations at 42 CFR 412.106, in order to meet the qualifying criteria for this additional DSH payment, a hospital must prove that a disproportionate percentage of its patients are low income using Supplemental Security Income (SSI) and Medicaid as proxies for this determination. This percentage includes two computations: (1) the ''Medicare fraction'' or the ''SSI ratio'' which is the percent of patient days for beneficiaries who are eligible for Medicare Part A and SSI and (2) the ''Medicaid fraction'' which is the percent of patient days for patients who are eligible for Medicaid but not Medicare. Once a hospital qualifies for this DSH payment, CMS also determines a hospital's payment adjustment; Form Numbers: CMS–R–194 (OMB #: 0938–0691; *Frequency:* Reporting—Occasionally; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 800; *Total Annual Responses:* 800; *Total Annual Hours:* 400. (For policy questions regarding this collection contact JoAnn Cerne at 410–786–4530. For all other issues call 410–786–1326.)

5. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations at 42 CFR 421.300–421.316; *Use:* Section 1893(d)(1) of the Social Security Act requires CMS to establish a process for identifying, evaluating, and resolving conflicts of interest. CMS proposed a process in Section 421.310 to mandate submission of pertinent information regarding conflicts of interest. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract. CMS needs this information to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. *Form Number:* CMS–R–232 (OMB #: 0938–0723); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 11; *Total Annual Responses:* 44; Total Annual Hours: 2,200. (For policy questions regarding this collection contact Joe Strazzire at 410–786–2775. For all other issues call 410–786–1326.)

6. *Type of Information Collection Request:* Revision of a currently approved Collection; *Title of Information Collection:* Home Health Advance Beneficiary Notice (HHABN); *Use:* Home health agencies (HHAs) are required to provide written notice to Medicare beneficiaries under various circumstances involving the initiation, reduction, or termination of services. The vehicle used in these situations is the Home Health Advance Beneficiary Notice (HHABN). The notice is designed to ensure that beneficiaries receive complete and useful information regarding potential financial liability or any changes made to their plan of care (POC) to enable them to make informed consumer decisions. The notice must provide clear and accurate information about the specified services and, when applicable, the cost of services when Medicare denial of payment is expected by the HHA. *Form Number:* CMS–R–296 (OMB #: 0938–0781); *Frequency:* Reporting—Hourly, Daily, Weekly, Monthly, Yearly, Quarterly, Semi-annually, Biennially, Once and Occasionally; *Affected Public:* Business or other for-profits and Not-for-profit institutions; *Number of Respondents:* 9024; *Total Annual Responses:* 12,349,787; *Total Annual Hours:* 1,028,737. (For policy questions regarding this collection contact Evelyn Blaemire at 410–786–1803. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by July 14, 2009:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number (CMS–10283), Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: May 7, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–11422 Filed 5–14–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10237 and 10214, and CMS–10171]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The

necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Advantage Applications—Part C and regulations under 42 CFR 422 subpart K; *Use:* The Balanced Budget Act of 1997 established a new ''Part C'' in the Medicare statute Social Security Act (the Act), which provided for a Medicare+Choice (M+C) program. Under section 1851 of the Act, every individual entitled to Medicare Part A and enrolled under Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the Original Medicare Program or an M+C plan.

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) was enacted on December 8, 2003. The MMA established the Medicare Prescription Drug Benefit Program (Part D) and made revisions to the provisions of Medicare Part C, governing what is now called the Medicare Advantage (MA) program (formerly Medicare+Choice).

Coverage for the prescription drug benefit is provided through contracted prescription drug plans or through Medicare Advantage (MA) plans that offer integrated prescription drug and health care coverage (MA–PD plans). Cost plans that are required under section 1876 of the Social Security Act, and Employer Group Waiver Plans (EGWP) may also provide a Part D benefit. Organizations wishing to provide services under the MA and MA–PD plans must complete an application, negotiate rates and receive final approval from CMS. Certain existing MA plans may also expand their contracted area by completing the Service Area Expansion (SAE) application. *Form Number:* CMS–10237 and 10214 (OMB# 0938–0935); *Frequency:* Yearly; *Affected Public:* Private Sector; *Number of Respondents:* 267; *Total Annual Responses:* 267; *Total Annual Hours:* 6,490. (For policy questions regarding this collection contact Betty Burrier at 410–786–4649. For all other issues call 410–786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Coordination of Benefits between Part D Plans and Other Prescription Coverage Providers; *Use:* Section 1860D–23 and 1860D–24 of the Social Security Act requires the Secretary to establish requirements for prescription drug plans to ensure the effective coordination between Part D plans, State pharmaceutical Assistance programs and other payers. This collection request will assist CMS, Part D plans and other payers with coordination of prescription drug benefits at the point-of-sale and tracking of the beneficiary's True out-of-pocket (TrOOP) expenditures using the TrOOP facilitator. This information will be used by Part D plans, other health insurers or payers, pharmacies and CMS to coordinate prescription drug benefits provided to the Medicare beneficiary. Beginning in CY 2009, CMS, via the TrOOP facilitation contractor, will automate the transfer of beneficiary coverage information when a beneficiary changes plans. *Form Number:* CMS–10171 (OMB# 0938–0978); *Frequency:* Hourly, yearly and occasionally; *Affected Public:* Business or other for-profits; *Number of Respondents:* 56,988; *Total Annual Responses:* 1,139,760; *Total Annual Hours:* 1,125,883. (For policy questions regarding this collection contact Christine Hinds at 410–786–4578. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on June 15, 2009.

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, E-mail: *OIRA_submission@omb.eop.gov.*

Dated: *May 7, 2009.*

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–11424 Filed 5–14–09; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Grant Application Data Summary (GADS) Form.

OMB No.: 0970–0328.

Description: The Grant Application Data Summary (GADS) form collects information from applicants seeking grants from the Administration for Native Americans (ANA). Applicants complete the GADS form as part of their funding package. This standardized format allows ANA to evaluate applications for financial assistance and to determine the relative focus of the projects for which such assistance is requested. The data collected focuses on the specific ANA program area for which the applicant is applying. ANA awards annual grants in the following nine competitive areas: (1) Social & Economic Develop Strategies (SEDS); (2) Alaska SEDS; (3) Special Initiative: Family Preservation: Improving the Well-Being of Children Planning; (4) Special Initiative: Family Preservation: Improving the Well-Being of Children Implementation; (5) Native Language Preservation & Maintenance Assessment; (6) Native Language Preservation & Maintenance Planning; (7) Native Language Preservation & Maintenance Implementation; (8) Native Language Preservation & Maintenance Immersion; (9) Environmental Regulatory Enhancement.

Respondents: Federally Recognized Indian Tribes, Tribal Governments, Native American Non-profits, Tribal Colleges and Universities.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Grant Application Data Summary (GADS)	500	1	0.50	250

Estimated Total Annual Burden Hours: 250

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 12, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–11364 Filed 5–14–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–09–0234)

Agency Forms Undergoing Paperwork Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request a copy of these requirements, call the CDC Reports Clearance Officer at 404–639–5960 or send comments to CDC/ATSDR Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.* Written comments should be received within 30 days of this notice.

Proposed Project

National Ambulatory Medical Care Survey (NAMCS) (OMB No. 0920–0234)—Revision—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 ''utilization of health care'' in the United States. NAMCS was conducted annually from 1973 to 1981, again in 1985, and resumed as an annual survey in 1989. The purpose of NAMCS is to meet the needs and demands for statistical information about the provision of ambulatory medical care services in the United States. NCHS is seeking OMB approval to extend this survey for three years.

Ambulatory services are rendered in a wide variety of settings, including physician offices and hospital outpatient and emergency departments. The NAMCS target universe consists of all office visits made by ambulatory patients to non-Federal office-based physicians (excluding those in the specialties of anesthesiology, radiology, and pathology) who are engaged in direct patient care.

In 2006, physicians and mid-level providers (*i.e.,* nurse practitioners, physician assistants, and nurse midwives) practicing in community health centers (CHCs) were added to the NAMCS sample, and these data will continue to be collected. To complement NAMCS data, NCHS initiated the National Hospital Ambulatory Medical Care Survey (NHAMCS, OMB No. 0920–0278) in 1992 to provide data concerning patient visits to hospital outpatient and emergency departments. NAMCS and NHAMCS are the principal sources of data on ambulatory care provided in the United States.

NAMCS provides a range of baseline data on the characteristics of the users and providers of ambulatory medical care. Data collected include the patients' demographic characteristics, reason(s) for visit, provider diagnoses, diagnostic services, medications, and visit disposition. In addition, information on cervical cancer screening practices in physician offices will continue to be collected through the Cervical Cancer Screening Supplement (CCSS), which was added in 2006. It will allow CDC's National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP) to evaluate cervical cancer screening methods and the use of Human Papillomavirus DNA tests.

A supplemental mail survey on the adoption and use of electronic medical records (EMRs) in physician offices was added to NAMCS in 2008, and will continue. These data were requested by the Office of the National Coordinator for Health Information Technology (ONC), Department of Health and Human Services, to measure progress toward goals for EMR adoption. The mail survey will collect information on characteristics of physician practices and the capabilities of EMRs used in those practices.

In 2009, in addition to conducting the on-going survey, NAMCS will include an additional sample of 70 physicians to pretest additional questionnaire items on laboratory values. These new items were requested by the Division of Heart Disease and Stroke Prevention within NCCDPHP to better understand the extent to which ambulatory health care providers identify and control abnormal values before and after cardiovascular disease. Users of NAMCS data include, but are not limited to, Congressional offices, Federal agencies, state and local governments, schools of public health, colleges and universities, private industry, nonprofit foundations, professional associations, clinicians, researchers, administrators, and health planners.

There is no cost to respondents other than their time to participate. The total

estimated annualized burden hours are 5,932.

ESTIMATED ANNUALIZED BURDEN TABLE

Type of form	Type of respondent	Form name	Number of respondents	Number of responses per respondent	Hours per response
Core NAMCS Forms	Office-based physicians/CHC providers.	Physician Induction Interview (NAMCS–1).	3,657	1	28/60
	Community Health Center Directors.	Community Health Center Induction Interview (NAMCS–201).	104	1	20/60
	Office-based physicians/CHC providers/staff.	Patient Record form (NAMCS–30).	738	30	9/60
	Office/CHC staff	Pulling, re-filing Patient Record form (NAMCS–30).	650	30	1/60
	Office-based physicians/CHC providers/staff.	Cervical Cancer Screening Supplement (NAMCS–CCS).	464	1	15/60
	Office-based physicians	EMR/EHR Mail Survey	1,143	1	20/60
Lab Values Pre-test Forms	Office-based physicians	Physician Induction Interview (NAMCS–1).	23	1	28/60
	Office-based physicians/staff	Patient Record form (NAMCS–30).	8	30	9/60

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Office of the Chief Science Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–11379 Filed 5–14–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer at (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Recovery Services for Adolescents and Families—New

The Substance Abuse and Mental Health Services Administration's (SAMHSA) Center for Substance Abuse Treatment will conduct a data collection on the helpfulness of recovery support services for young people and their families after leaving substance abuse treatment. Specifically, the Recovery Services for Adolescents and Families (RSAF) project is trying to understand whether or not young people and their families find the following recovery support services helpful: (1) Telephone/text message support; (2) a recovery-oriented social networking site; and (3) a family program. Approximately 200 adolescent respondents will be asked to complete 4 data collection forms (some repeated) during 5 interviews (baseline and 4 follow-ups) over a 12 month period after enrollment or discharge from treatment. Approximately 200 collateral respondents (*i.e.*, a parent/guardian/concerned other) will be asked to complete 7 data collection forms (some repeated) during 5 interviews (baseline and 4 follow-ups) over a 12 month period after their adolescent's enrollment or discharge from treatment. Approximately 15 to 20 project staff respondents, including Project Coordinators, Telephone Support Volunteers, a Social Network Site Moderator, Family Program Clinicians, and a Support Services Supervisor, will be asked to complete between 2 and 5 data collection forms at varying intervals during the delivery of recovery support services. Across all respondents, a total of 26 data collection forms will be used. Depending on the time interval and task, information collections will take anywhere from about 5 minutes to 2 hours to complete. A description of each data collection form follows:

Follow-Up Locator Form—Participant (FLF–P; Adolescent Respondent). The FLF–P contains over 50 items that are a combination of yes/no, multiple choice, and open-ended formats. Data are gathered about an adolescent's contact information, personal contacts, criminal justice contacts, school/job contacts, hang-out information, internet contacts, and identifying information in order to locate and interview that adolescent over multiple follow-up intervals.

Global Appraisal of Individual Needs—Initial (GAIN–I 5.6.0 Full; Adolescent Respondent). The GAIN is an evidence-based assessment used with both adolescents and adults and in outpatient, intensive outpatient, partial hospitalization, methadone, short-term residential, long-term residential, therapeutic community, and correctional programs. There are over 1,000 questions in this initial version that are in multiple formats, including multiple choice, yes/no, and open-ended. Eight content areas are covered: Background, Substance Use, Physical Health, Risk Behaviors and Disease Prevention, Mental and Emotional Health, Environment and Living Situation, Legal, and Vocational. Each section contains questions on the recency of problems, breadth of

symptoms, and recent prevalence as well as lifetime service utilization, recency of utilization, and frequency of recent utilization.

Global Appraisal of Individual Needs—Monitoring 90 Days (GAIN–M90 5.6.0 Full; Adolescent Respondent). The GAIN is an evidence-based assessment used with both adolescents and adults and in outpatient, intensive outpatient, partial hospitalization, methadone, short-term residential, long-term residential, therapeutic community, and correctional programs. There are over 500 questions in this follow-up version that are in multiple formats, including multiple choice, yes/no, and open-ended. Eight content areas are covered: Background, Substance Use, Physical Health, Risk Behaviors and Disease Prevention, Mental and Emotional Health, Environment and Living Situation, Legal, and Vocational. Each section contains questions on the recency of problems, breadth of symptoms, and recent prevalence as well as lifetime service utilization, recency of utilization, and frequency of recent utilization.

Supplemental Assessment Form (SAF 0309; Adolescent Respondent). The SAF contains 72 questions that are a combination of multiple choice, yes/no, and open-ended formats. Content areas include: Race, happiness with parent or caregiver in several life areas, participation in prosocial activities, receipt of and satisfaction with telephone support services, and usage of and satisfaction with the project's social networking site.

Follow-Up Locator Form—Collateral (FLF–C; Collateral Respondent). The FLF–C contains over 50 items that are a combination of yes/no, multiple choice, and open-ended formats. Data are gathered about a collateral's contact information, personal contacts, and job contacts in order to locate and interview that collateral over multiple follow-up intervals.

Global Appraisal of Individual Needs—Collateral Monitoring (GCI; Collateral Respondent). The GCI contains over 200 items in this initial version that are in multiple formats, including multiple choice, yes/no, and open-ended. The following content areas are covered: Relationship to the adolescent respondent, background, and the adolescent's background and substance use, environment and living situation, and vocational information. There are questions on the recency of problems, breadth of symptoms, and recent prevalence as well as lifetime service utilization, recency of utilization, and frequency of recent utilization.

Global Appraisal of Individual Needs—Collateral Monitoring (GCM 5.3.3; Collateral Respondent). The GCM contains over 200 items in this follow-up version that are in multiple formats, including multiple choice, yes/no, and open-ended. The following content areas are covered: Relationship to the adolescent respondent, background, and the adolescent's background and substance use, environment and living situation, and vocational information. There are questions on the recency of problems, breadth of symptoms, and recent prevalence as well as lifetime service utilization, recency of utilization, and frequency of recent utilization.

Supplemental Assessment Form—Collateral (SAF—Collateral; Collateral Respondent). The SAF contains 72 questions that are a combination of multiple choice, yes/no, and open-ended formats. Content areas include: Knowledge about the adolescent's participation in prosocial activities, receipt of and satisfaction with telephone support services, and usage of and satisfaction with the project's social networking site.

Self-Evaluation Questionnaire (SEQ; Collateral Respondent). The SEQ contains 40 multiple choice items that ask the collateral about feelings and symptoms of anxiety.

Family Environment Scale (FES; Collateral Respondent). The FES contains 18 yes/no items that measure family cohesion and conflict.

Relationship Happiness Scale (Caregiver Version) (Collateral Respondent). The Relationship Happiness Scale contains 8 items that ask the collateral about happiness with his/her relationship with the adolescent respondent in various life areas.

Eligibility Checklist (Project Coordinator). The Eligibility Checklist contains 12 yes/no items that are used to determine whether or not an adolescent meets inclusion/exclusion criteria for the project and is eligible to be approached for informed consent.

Follow-Up Contact Log (Project Coordinator). The Follow-Up Contact Log is open-ended and provides space for all data collected during attempted and completed follow-up contacts, over the phone and in-person, to be recorded.

Volunteer/Staff Survey (Project Coordinator). The Volunteer/Staff Survey contains 10 items in fill-in-the-blank, yes/no, and multiple choice formats. Items ask about background, demographic information, and role in the project.

Telephone Support Case Review Form (Telephone Support Volunteer). The Telephone Support Case Review Form contains multiple rows that allow a volunteer to record 5 pieces of data about adolescents that they make phone calls to: Initials, treatment discharge status/date, weeks since treatment discharge, date of last telephone session, and number of completed telephone sessions since discharge. This allows the volunteer and supervisor to monitor the progress of active cases.

Telephone Support Call Log (Telephone Support Volunteer). The Telephone Support Call Log is open-ended and provides space for all data collected during attempted and completed support contacts to be recorded.

Adolescent Telephone Support Documentation Form (Telephone Support Volunteer). The Adolescent Telephone Support Documentation Form contains 22 items that are asked of an adolescent during a telephone support contact by a volunteer. The form is used to record yes/no and open-ended responses to questions asking about substance use and recovery-related activities.

Telephone Support Discharge Form (Telephone Support Volunteer). The Telephone Support Discharge Form contains 10 fields to record the following information at the end of an adolescent's participation in telephone support: Adolescent name, today's date, volunteer name, notification date, telephone support intake date, telephone support discharge date, reason for discharge, number of completed sessions, referral for more intervention, and successful contact for more intervention.

Volunteer/Staff Survey (Telephone Support Volunteer)—See Volunteer/Staff Survey (Project Coordinator) above.

Social Networking Moderator Log (Social Network Site Moderator). The Social Networking Moderator Log contains 11 fields for the moderator to record usage data for the project's social networking site. The moderator tracks number of visits to the site, number of unique visitors, messages posted, chat room attendance, and problems with users.

Volunteer/Staff Survey (Social Network Site Moderator)—See Volunteer/Staff Survey (Project Coordinator) above.

Family Program Progress Notes (Family Program Clinician). The Family Program Progress Notes form is open-ended and provides space for all data collected during attempted and completed family program contacts to be recorded.

Family Program Attendance Log (Family Program Clinician). The Family

Program Attendance Log is used to record 6 pieces of information about each attempted session: Session number, scheduled date, was the session rescheduled (yes/no), was the family member a no-show (yes/no), did the family member attend the session (yes/no), and comments.

Family Program Case Review Report (Family Program Clinician). The Family Program Case Review Report contains multiple rows that allow a clinician to record information that allows the clinician and supervisor to monitor the progress of active cases. Areas asked about include: Family program procedures delivered, date of last session, and weeks in family program.

Family Program Discharge Form (Family Program Clinician). The Family Program Discharge Form contains 9 fields to record the following information at the end of participation in the family program: Caregiver name, today's date, adolescent name, notification date, clinician name, family program intake date, family program discharge date, reason for discharge, and number of completed sessions.

Volunteer/Staff Survey (Family Program Clinician)—See Volunteer/Staff Survey (Project Coordinator) above.

Adolescent Telephone Support Quality Assurance Checklist (Support Services Supervisor). This checklist contains 43 items that ask the supervisor to rate how well a telephone support volunteer delivered required service components to adolescents. Volunteers are rated on a scale of 1 through 5 in the following areas: Substance use since last call (no use), substance use since last call (use), substance use since last call (still using), substance use since last call (stopped using), attendance at 12-step meetings, recovery-related activities, activities related to global health, follow-up since last call, closing the call, overall, general clinical skills, and overall difficulty of session.

Social Networking Quality Assurance Checklist (Support Services Supervisor). This checklist contains 17 items that ask the supervisor to rate how well a social networking site moderator delivered required service components to adolescents. The moderator is rated on a scale of 1 through 5 in the following areas: Group discussions, administrative tasks, overall, and general skills.

Family Program QA Checklist (Support Services Supervisor). This checklist contains 72 items that ask the supervisor to rate how well a family program clinician delivered required service components to family members. The clinician is rated on a scale of 1 through 5 in the following areas: Initial meeting motivational strategies, domestic violence precautions, functional analysis of substance use, positive communication skills, use of positive reinforcement, time out from positive reinforcement, allowing the identified patient to experience the natural consequences of substance use, helping concerned significant others' enrich their own lives, maintaining the identified patient in recovery-oriented systems of care, and general.

Volunteer/Staff Survey (Support Services Supervisor)—See Volunteer/Staff Survey (Project Coordinator) above.

The following table is a list of the hour burden of the information collection by form and by respondent:

Instrument/form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annualized hour burden per respondent *
Adolescent Respondent					
FLF–P	200	1	200	.32	.32
GAIN–I 5.6.0 Full	200	1	200	2	2
GAIN–M90 5.6.0 Full	200	4	800	1	4
SAF	200	5	1000	.25	1.25
Collateral (parent/guardian/concerned other) Respondent					
FLF–C	200	1	200	.25	.25
GCI	200	1	200	.25	.25
GCM 5.3.3	200	4	800	.25	1
SAF–Collateral	200	5	1000	.25	1.25
SEQ	200	5	1000	.16	.8
FES	200	5	1000	.08	.4
Relationship Happiness Scale (Caregiver)	200	5	1000	.08	.4
Project Staff					
Project Coordinator:					
Eligibility Checklist	4	50	200	.25	12.5
Follow-Up Contact Log	4	50	200	.16	8
Volunteer/Staff Survey	4	1	4	.25	.25
Telephone Support Volunteer:					
Telephone Support Case Review Form	8	450	3600	.25	112.5
Telephone Support Call Log	8	25	200	.16	4
Adolescent Telephone Support Documentation Form	8	450	3600	.5	225
Telephone Support Discharge Form	8	25	200	.16	4
Volunteer/Staff Survey	8	1	8	.25	.25
Social Network Site Moderator:					
Social Networking Moderator Log	1	52	52	.5	26
Volunteer/Staff Survey	1	1	1	.25	.25
Family Program Clinician:					
Family Program Progress Notes	4	650	2600	.16	104
Family Program Attendance Log	4	50	200	.08	4
Family Program Case Review Report	4	650	2600	.25	162.5

Instrument/form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total annualized hour burden per respondent *
Family Program Discharge Form	4	50	200	.16	8
Volunteer/Staff Survey	4	1	4	.25	.25
Support Services Supervisor:					
Adolescent Telephone Support QA Checklist	1	12	12	1	12
Social Networking QA Checklist	1	12	12	.5	6
Family Program QA Checklist	1	12	12	1	12
Volunteer/Staff Survey	18	1	18	.25	.25
Column Total	418	2580			713.67

* Total Annualized Hour Burden Per Respondent = Responses Per Respondent × Hours Per Response.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1044, 1 Choke Cherry Road, Rockville, MD 20857 *AND* e-mail her a copy at *summer.king@samhsa.hhs.gov.* Written comments should be received within 60 days of this notice.

Dated: May 11, 2009.

Elaine Parry,

Director, Office of Program Services.

[FR Doc. E9–11377 Filed 5–14–09; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://www.workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov.*

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1042, One Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Public Law 100–71. Subpart C of the Mandatory Guidelines, ''Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies,'' sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840/800–877–7016, (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624, 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150.

Aegis Sciences Corporation, 345 Hill Ave., Nashville, TN 37210, 615–255–2400, (Formerly: Aegis Analytical Laboratories, Inc.).

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783, (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clendo Reference Laboratory, Avenue Santa Cruz #58, Bayamon, Puerto Rico 00959, 787–620–9095.

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802, 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602, 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215–674–9310.

DynaLIFE Dx,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2, 780–451–3702/800–661–9876, (Formerly: Dynacare Kasper Medical Laboratories).

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 662–236–2609.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall Street, London, ONT, Canada N6A 1P4, 519–679–1630.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823, (Formerly: Laboratory Specialists, Inc.).

Kroll Laboratory Specialists, Inc., 450 Southlake Blvd., Richmond, VA

23236, 804–378–9130, (Formerly: Scientific Testing Laboratories, Inc.; Kroll Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040, 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986, (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–572–6900/800–833–3984, (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671, 866–827–8042/800–233–6339, (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

LabOne, Inc. d/b/a Quest Diagnostics, 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–873–8845, (Formerly: Quest Diagnostics Incorporated; LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Maxxam Analytics,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8, 905–817–5700, (Formerly: Maxxam Analytics Inc., NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417, 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504, 888–747–3774, (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311, 800–328–6942, (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204, 509–755–8991/800–541–7891x7.

Phamatech, Inc., 10151 Barnes Canyon Road, San Diego, CA 92121, 858–643–5555.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590/800–729–6432, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403, 610–631–4600/877–642–2216, (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405, 866–370–6699/818–989–2521, (Formerly: SmithKline Beecham Clinical Laboratories).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 574–234–4176 x276.

Southwest Laboratories, 4625 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040, 602–438–8507/800–279–0027.

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052.

STERLING Reference Laboratories, 2617 East L Street, Tacoma, Washington 98421, 800–442–0438.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

The following laboratory voluntarily withdrew from the NLCP on March 31, 2009:

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–364–7400, (Formerly: St. Lawrence Hospital & Healthcare System).

Dated: May 8, 2009.

Elaine Parry,

Director, Office of Program Services, SAMHSA.

[FR Doc. E9–11374 Filed 5–14–09; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

National Advisory Committee on Rural Health and Human Services; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the following committee will convene its sixty-second meeting.

Name: National Advisory Committee on Rural Health and Human Services

Dates and Times: June 9, 2009, 9 a.m.—4:45 p.m.

June 10, 2009, 8:45 a.m.—3 p.m.

June 11, 2009, 8:45 a.m.—11 a.m.

Place: Hampton Inn,
1720 Rapp Street,
Rapid City, South Dakota 57701,
Phone: 605–348–1911.

Status: The meeting will be open to the public.

Purpose: The National Advisory Committee on Rural Health and Human Services provides advice and recommendations to the Secretary with respect to the delivery, research, development and administration of health and human services in rural areas.

Agenda: Tuesday morning, at 9 a.m., the meeting will be called to order by the Chairperson of the Committee, the Honorable David Beasley. The first presentation will be an overview of rural South Dakota by Dr. Sidney Goss, Professor of Demography, South Dakota School of Mines and Technology. The Committee will be formally welcomed by the South Dakota Office of Rural Health, Sandra Durick, Director. The Committee will hear presentations on the three chosen

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Subcommittee topics. The first panel will focus on Primary Care Workforce. The confirmed speakers are Dr. Bruce Vogt, Chair of Family Medicine, University of South Dakota; Dr. Charles Hart, CEO of Regional Health System; and Josie Peterson, South Dakota PCO Director. The second panel is Home-Based Care Options for Seniors. The confirmed speakers are Deb Bowman, Committee Member and Secretary of the South Dakota Department of Social Services; and Senator Jean Hunhoff, head of home care services at Yankton, South Dakota, and member of the task force on Meeting the Continuum of Care Needs of the Elderly in South Dakota. The final panel of the day is Health Care Provider Integration. The confirmed speakers are Tom Dean, MedPAC Member; Scot Graff, Community Healthcare Association of the Dakotas; and Matt Michaels, Health Care Attorney. After the panel discussions, the Committee Chair will give an overview of the site visits. The Tuesday meeting will close at 4:45 p.m.

Wednesday morning, at 8:45 a.m., the Committee will break into Subcommittees and depart to the site visits. The Primary Care Workforce Subcommittee will visit Phillip Health Services in Philip, South Dakota. The Home-Based Care Options for Seniors Subcommittee will visit Regional Health Hospice Center in Rapid City, South Dakota. The Health Care Provider Integration Subcommittee will visit Custer Regional Hospital in Custer, South Dakota. Transportation to the site visits will not be provided to the public. The Subcommittees will return to Rapid City, South Dakota at 3 p.m. The Wednesday meeting will close at 3 p.m.

The final session will be convened on Thursday morning at 8:45 a.m. The meeting will open with a review of the Subcommittee site visits. The staff of the Office of Rural Health Policy will provide an update on the Department of Health and Human Services. The Committee will draft a letter to the Secretary or Designee and discuss the September meeting.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Jennifer Chang, MPH, Executive Secretary, National Advisory Committee on Rural Health and Human Services, Health Resources and Services Administration, Parklawn Building, Room 9A–55, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–0835, Fax (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Michele Pray Gibson, Office of Rural Health Policy (ORHP), Telephone (301) 443–0835. The Committee meeting agenda will be posted on ORHP's Web site *http://www.ruralhealth.hrsa.gov*.

Dated: April 11, 2009.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E9–11441 Filed 5–14–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Pediatric Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Pediatric Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on Tuesday, June 23, 2009, from 8:30 a.m. to 5 p.m.

Location: Hilton Washington DC/Rockville Executive Meeting Center, Plaza Ballroom, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Carlos Peña, Office of Science and Health Coordination, Office of the Commissioner (HF–33), Food and Drug Administration, 5600 Fishers Lane (for express delivery, rm. 14B–08), Rockville, MD 20857, 301–827–3340, or by e-mail: *carlos.peña@fda.hhs.gov* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 8732310001. Please call the Information Line for up-to-date information on this meeting. A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the agency's Web site and call the appropriate advisory committee hot line/phone line to learn about possible modifications before coming to the meeting.

Agenda: On June 23, 2009, the Pediatric Advisory Committee will review and discuss reports by the agency, as mandated by the Best Pharmaceuticals for Children Act and the Pediatric Research Equity Act, for ALVESCO (ciclesonide), ANDROGEL (testosterone), ASMANEX (mometasone furoate), COMBIGAN (brimonidine/timolol), DEPAKOTE (divalproex sodium), DERMA–SMOOTHE F/S (fluocinolone acetate), DIOVAN (valsartan), HEPSERA (adefovir dipivoxil), INSPRA (eplerenone), MOXATAG (amoxicillin), OMNARIS (ciclesonide), and ZOMETA (zoledronic acid).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm*, click on the year 2009 and scroll down to the appropriate advisory committee link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before June 9, 2009. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those desiring to make formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before June 1, 2009. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by June 2, 2009.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Carlos Peña at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/oc/advisory/default.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 8, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–11317 Filed 5–14–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0191]

Request for Nominations for Voting Consumer Representative Members on Public Advisory Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting consumer representatives to serve on the Food Advisory Committee. This advisory committee is under the purview of the Center for Food Safety and Applied Nutrition (CFSAN).

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on its advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: Nominations will be accepted for those voting consumer representative vacancies that will occur on June 30, 2010. Nominations received before July 14, 2009, will be considered for June 30, 2010, vacancies. Nominations received after July 14, 2009, will be accepted for vacancies occurring after June 30, 2010.

ADDRESSES: All nominations for membership should be sent electronically to *CV@OC.FDA.GOV*, or by mail to Advisory Committee Oversight and Management Staff (HF–4), 5600 Fishers Lane, rm. 15A–12, Rockville, MD 20857. Information about becoming a member on an FDA advisory committee can also be obtained by visiting FDA's Web site at *http://www.fda.gov/oc/advisory/default.htm*.

FOR FURTHER INFORMATION CONTACT: Carolyn Jeletic, Center for Food Safety and Applied Nutrition (HFS–024), 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1913, FAX: 301–436–2637, e-mail: *Carolyn.Jeletic@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting consumer members on the following CFSAN committee:

I. Function

Food Advisory Committee

The Committee provides advice primarily to Commissioner of Food and Drugs and other appropriate officials, on emerging food safety, food science, nutrition, and other food-related health issues that FDA considers of primary importance for its food and cosmetics programs. The Committee may be charged with reviewing and evaluating available data and making recommendations on matters such as those relating to the following topics: (1) Broad scientific and technical food or cosmetic related issues, (2) the safety of new foods and food ingredients, (3) labeling of foods and cosmetics, (4) nutrient needs and nutritional adequacy, and (5) safe exposure limits for food contaminants. The Committee may also be asked to provide advice and make recommendations on ways of communicating to the public the potential risks associated with these issues and on approaches that might be considered for addressing the issues.

II. Criteria for Members

Persons who are nominated for membership on the committees as consumer representatives must meet the following criteria: (1) Demonstrate ties to consumer and community-based organizations, (2) be able to analyze scientific and technical data, (3) understand research design, and (4) discuss benefits and risks. The consumer representative must be able to represent the consumer perspective on issues and actions before the advisory committee; serve as a liaison between the committee and interested consumers, associations, coalitions, and consumer organizations; and facilitate dialogue with the advisory committees on scientific issues that affect consumers.

III. Selection Procedures

The selection of members representing consumer interests is conducted through procedures that include the use of organizations representing the public interest and consumer advocacy groups. The organizations have the responsibility of recommending candidates of the agency's selection.

IV. Nomination Procedures

All nominations must include a cover letter, a curriculum vitae or resume (that includes the nominee's office address, telephone number, and e-mail address), and a list of consumer or community-based organizations for which the candidate can demonstrate active participation. Nominations will specify the advisory committee for which the nominee is recommended. Nominations will include confirmation that the nominee is aware of the nomination.

Any interested person or organization may nominate one or more qualified persons for membership on one or more of the advisory committees to represent consumer interests. Self-nominations are also accepted. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of a conflict of interest. The nomination should specify the committee of interest. The term of office is up to 4 years, depending on the appointment date. This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: May 7, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–11319 Filed 5–14–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–D–0209]

Small Entity Compliance Guide: Health Claims; Calcium and Osteoporosis, and Calcium, Vitamin D, and Osteoporosis; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Food Labeling: Health Claims; Calcium and Osteoporosis, and Calcium, Vitamin D, and Osteoporosis—Small Entity Compliance Guide.'' The small entity compliance guide (SECG) is being issued for a final rule published in the **Federal Register** of September 29, 2008, as corrected on November 12, 2008, and it is intended to set forth in plain language the legal requirements of the regulation and to help small businesses understand the regulation.

DATES: Submit written or electronic comments on the SECG at any time.

ADDRESSES: Submit written comments on the SECG to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments on the SECG to

http://www.regulations.gov. Submit written requests for single copies of the SECG to the Office of Nutrition, Labeling, and Dietary Supplements (HFS–800), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the SECG.

FOR FURTHER INFORMATION CONTACT: Blakeley Denkinger, Center for Food Safety and Applied Nutrition (HFS–830), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1450.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 29, 2008 (73 FR 56477), as corrected on November 12, 2008 (73 FR 66754), FDA issued a final rule amending its labeling regulation authorizing a health claim on the relationship between calcium and a reduced risk of osteoporosis (21 CFR 101.72). The amendments allow for a health claim to be made for calcium and vitamin D and osteoporosis, and eliminate several requirements of the health claim. This final rule becomes effective January 1, 2010.

FDA examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5. U.S.C. 601–612) and determined that the final rule will not have a significant economic impact on a substantial number of small entities. In compliance with section 212 of the Small Business Regulatory Enforcement Fairness Act (Pub. L. 104–121), FDA is making available this SECG stating in plain language the legal requirements of the September 29, 2008, final rule, as corrected on November 12, 2008, concerning calcium and osteoporosis, and calcium, vitamin D, and osteoporosis.

FDA is issuing this SECG as a level 2 guidance consistent with FDA's good guidance practices regulation (21 CFR 10.115(c)(2)). The SECG represents FDA's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments regarding this SECG. Submit a single copy of electronic comments or two paper copies of any mailed comments, except that individuals may submit one paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The SECG and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.cfsan.fda.gov/guidance.html*.

Dated: May 8, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–11320 Filed 5–14–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–18]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Rita, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this

Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: COAST GUARD: Commandant, United States Coast Guard, Attn: Melissa Evans, 1900 Half St., SW., CG–431, Washington, DC 20593–0001; (202) 475–5628; ENERGY: Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA–50, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–5422; INTERIOR: Mr. Michael Wright, Acquisition & Property Management, Department of the Interior, 1849 C Street, NW., MS2603, Washington, DC 20240; (202) 208–5399; NAVY: Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: May 7, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM

FEDERAL REGISTER REPORT FOR 05/15/2009

Suitable/Available Properties

Land

Arizona

Portion/Tract SG–2–8
Ironwood Road
Apache Junction AZ 85220
Landholding Agency: Interior
Property Number: 61200920018
Status: Excess
Comments: 5.89 acres

Unsuitable Properties

Building

California

Bldgs. MO3, MO14, MO17
Sandia National Lab
Livermore Co: Alameda CA 94550
Landholding Agency: Energy
Property Number: 41200220001
Status: Excess
Reasons: Extensive deterioration

Bldgs. C920, C921, C922
Sandia Natl Laboratories
Livermore Co: Alameda CA 94551
Landholding Agency: Energy
Property Number: 41200540001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 175
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630001
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Trailer 1403
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Trailer 3703
Livermore National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200630004
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 363
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710001
Status: Excess
Reasons: Secured Area

Bldgs. 436, 446
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710002
Status: Excess
Reasons: Secured Area

Bldg. 3520
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 4182, 4184, 4187
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710004
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 5974
National Laboratory
Livermore CA
Landholding Agency: Energy
Property Number: 41200710005
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 194A, 198
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720007
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 213, 280
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720008
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 312, 345
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2177, 2178
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720010
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2687, 3777
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720011
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 263, 419
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1401, 1402, 1404
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720013
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1405, 1406, 1407
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy

Property Number: 41200720014
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1408, 1413, 1456
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720015
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 2684
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200720016
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. CM46A
Sandia Natl Lab
Livermore CA 94551
Landholding Agency: Energy
Property Number: 41200730005
Status: Excess
Reasons: Secured Area

Bldgs. 445, 534
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740001
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

4 Bldgs.
Lawrence Livermore Natl Lab
802A, 811, 830, 854A
Livermore CA
Landholding Agency: Energy
Property Number: 41200740002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 8806, 8710, 8711
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1492, 1526, 1579
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740005
Status: Excess
Reasons: Secured Area

Bldgs. 1601, 1632
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740006
Status: Excess
Reasons:Secured Area

Bldgs. 2552, 2685, 2728
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740007
Status: Excess
Reasons: Secured Area

Bldgs. 2801, 2802
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740008
Status: Excess
Reasons: Secured Area

Bldgs. 3175, 3751, 3775
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740009
Status: Excess
Reasons: Secured Area

4 Bldgs.
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740010
Status: Excess
Directions: 4161, 4316, 4384, 4388
Reasons: Secured Area

Bldgs. 4406, 4475
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740011
Status: Excess
Reasons: Secured Area

Bldgs. 4905, 4906, 4926
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740012
Status: Excess
Reasons: Secured Area

Bldg. 5425
Lawrence Livermore
National Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200740013
Status: Excess
Reasons: Secured Area

Bldg. 71G
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41200820001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 51, 51A
Lawrence Berkeley Natl Lab
Berkeley CA 94720
Landholding Agency: Energy
Property Number: 41200820002
Status: Excess
Reasons: Extensive deterioration

10 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200830002
Status: Excess
Directions: 2127, 4302, 4377, 4378, 4383, 5225, 5976, 5979, 5980, 6203
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

5 Bldgs.
Lawrence Livermore Natl Lab
1481, 1527, 1884, 1885, 1927
Livermore CA
Landholding Agency: Energy
Property Number: 41200840001
Status: Excess
Reasons: Extensive deterioration

Bldgs. 3577, 3982, 4128
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840002
Status: Excess
Reasons: Secured Area

Bldgs. 328, 367, 376
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840008
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 5125
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840010
Status: Excess
Directions: 1407, 1408, 1413, 1492, 1526, 1579
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

6 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840011
Status: Excess
Directions: 3775, 4161, 4316, 4388, 4905, 4906
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 8710, 8711, 8806
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200840012
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Lawrence Livermore Natl Lab
Livermore CA
Landholding Agency: Energy
Property Number: 41200920005
Status: Excess
Directions: 1541, 1878, 2727, 3180, 4107, 5477
Reasons: Secured Area

Bldg. 22172
Marine Corps Base
Camp Pendleton CA 92055
Landholding Agency: Navy
Property Number: 77200920020
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. SNI258
Naval Base
San Nicolas Island CA 93043
Landholding Agency: Navy
Property Number: 77200920021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

6 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77200920022
Status: Unutilized
Directions: PM1823A&B, 1825A&B, 1827A&B
Reasons: Secured Area

9 Bldgs.
Naval Base
Point Mugu CA 93042
Landholding Agency: Navy
Property Number: 77200920023
Status: Unutilized
Directions: PM1936, 1937, 1938, 1939, 1959, 1961, 1963, 1965, 1967
Reasons: Secured Area

Connecticut

Bldgs. 25 and 26
Prospect Hill Road
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199440003
Status: Excess
Reasons: Secured Area

9 Bldgs.
Knolls Atomic Power Lab, Windsor Site
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199540004
Status: Excess
Reasons: Secured Area

Bldg. 8, Windsor Site
Knolls Atomic Power Lab
Windsor Co: Hartford CT 06095
Landholding Agency: Energy
Property Number: 41199830006
Status: Unutilized
Reasons: Extensive deterioration

Southeast Corner Parcel
Naval Submarine Base
Groton CT 06349
Landholding Agency: Navy
Property Number: 77200920024
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Hawaii

Bldgs. 40, 43
Naval Magazine West Loch
Ewa Beach HI 96706
Landholding Agency: Navy
Property Number: 77200920025
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 52, 64, 64A
Naval Station
Pearl Harbor HI 06860
Landholding Agency: Navy
Property Number: 77200920026
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Idaho

Bldg. CPP–691
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610003
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–669
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610013
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–673
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610018
Status: Unutilized
Reasons: Secured Area

Bldg. PBF–620
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610019
Status: Unutilized
Reasons: Secured Area

Bldg. PBF–619
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610022
Status: Unutilized
Reasons: Secured Area

Bldg. TRA–641
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610034
Status: Unutilized
Reasons: Secured Area

Bldg. CF–606
Idaho National Engineering Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41199610037
Status: Unutilized
Reasons: Secured Area

Bldgs. CPP638, CPP642
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410014
Status: Excess
Reasons: Secured Area

Bldg. CPP 743
Idaho Natl Eng Lab
Scoville Co: Butte ID 83–415
Landholding Agency: Energy
Property Number: 41200410020
Status: Excess
Reasons: Secured Area

Bldgs. CPP1647, 1653
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410022
Status: Excess
Reasons: Secured Area

Bldg. CPP1677
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410023
Status: Excess
Reasons: Secured Area

Bldg. 694
Idaho Natl Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200410034
Status: Excess
Reasons: Secured Area

Bldgs. CPP1604–CPP1608
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430071
Status: Excess
Reasons: Secured Area

Bldgs. CPP1617–CPP1619
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430072
Status: Excess
Reasons: Secured Area

6 Bldgs.
Idaho National Eng Lab

Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430073
Status: Excess
Directions: CPP1631, CPP1634, CPP1635, CPP1636, CPP1637, CPP1638
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430074
Status: Excess
Directions: CPP1642, CPP1643, CPP1644, CPP1646, CPP1649
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430075
Status: Excess
Directions: CPP1650, CPP1651, CPP1656
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430076
Status: Excess
Directions: CPP1662, CPP1663, CPP1671, CPP1673, CPP1674
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430077
Status: Excess
Directions: CPP1678, CPP1682, CPP1683, CPP1684, CPP1686
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430078
Status: Excess
Directions: CPP1713, CPP1749, CPP1750, CPP1767, CPP1769
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430079
Status: Excess
Directions: CPP1770, CPP1771, CPP1772, CPP1774, CPP1776
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430081
Status: Excess
Directions: CPP1789, CPP1790, CPP1792, CPP1794
Reasons: Secured Area

Bldgs. CPP2701, CPP2706
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430082
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430089
Status: Excess
Directions: TRA603, TRA604, TRA610
Reasons: Secured Area

Bldg. TAN611
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430090
Status: Excess
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430091
Status: Excess
Directions: TRA626, TRA635, TRA642, TRA648, TRA654
Reasons: Secured Area

Bldg. TAN655
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430092
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430093
Status: Excess
Directions: TRA657, TRA661, TRA668
Reasons: Secured Area

Bldg. TAN711
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430094
Status: Excess
Reasons: Secured Area

6 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430095
Status: Excess
Directions: CPP602–CPP606, CPP609
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430096
Status: Excess
Directions: CPP611–CPP614, CPP616
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430097
Status: Excess
Directions: CPP621, CPP626, CPP630, CPP639
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430098
Status: Excess
Directions: CPP641, CPP644, CPP645, CPP649
Reasons: Secured Area

Bldgs. CPP651–CPP655
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200430099
Status: Excess
Reasons: Secured Area

Bldgs. CPP659–CPP663
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440001
Status: Excess
Reasons: Secured Area

Bldgs. CPP666, CPP668
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440002
Status: Excess
Reasons: Secured Area

1 Bldg.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440004
Status: Excess
Directions: CPP684
Reasons: Secured Area

5 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440005
Status: Excess
Directions: CPP692, CPP694, CPP697–CPP699
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440006

Status: Excess
Directions: CPP701, CPP701A, CPP708
Reasons: Secured Area

Bldgs. 711, 719A
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440007
Status: Excess
Reasons: Secured Area

4 Bldgs.
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440008
Status: Excess
Directions: CPP724–CPP726, CPP728
Reasons: Secured Area

Bldg. CPP729/741
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440012
Status: Excess
Reasons: Secured Area

Bldgs. CPP733, CPP736
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440013
Status: Excess
Reasons: Secured Area

Bldgs. CPP740, CPP742
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440014
Status: Excess
Reasons: Secured Area

Bldgs. CPP746, CPP748
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440015
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP750, CPP751, CPP752
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440016
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP753, CPP753A, CPP754
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440017
Status: Excess
Reasons: Secured Area

Bldgs. CPP760, CPP763
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440018
Status: Excess
Reasons: Secured Area

Bldgs. CPP764, CPP765
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440019
Status: Excess
Reasons: Secured Area

Bldgs. CPP767, CPP768
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440020
Status: Excess
Reasons: Secured Area

Bldgs. CPP791, CPP795
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440021
Status: Excess
Reasons: Secured Area

3 Bldgs.
Idaho National Eng Lab
CPP796, CPP797, CPP799
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440022
Status: Excess
Reasons: Secured Area

Bldgs. CPP701B, CPP719
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440023
Status: Excess
Reasons: Secured Area

Bldgs. CPP720A, CPP720B
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440024
Status: Excess
Reasons: Secured Area

Bldg. CPP1781
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440025
Status: Excess
Reasons: Secured Area

2 Bldgs.
Idaho National Eng Lab
CPP0000VES–UTI–111, VES–UTI–112
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440026
Status: Excess
Reasons: Secured Area

Bldgs. TAN704, TAN733
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440028
Status: Excess
Reasons: Secured Area

Bldgs. TAN1611, TAN1614
Idaho National Eng Lab
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200440029
Status: Excess
Reasons: Secured Area

Bldg. CF633
Idaho Natl Laboratory
Scoville Co: Butte ID 83415
Landholding Agency: Energy
Property Number: 41200520005
Status: Excess
Reasons: Extensive deterioration

Bldgs. B23–602, B27–601
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820003
Status: Unutilized
Reasons: Secured Area

Bldgs. CF–635, CF650
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. CF–662, CF–692
Idaho Natl Laboratory
Idaho Falls ID 83415
Landholding Agency: Energy
Property Number: 41200820006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Illinois

Bldgs. 306A, B, C, TR–5
Argonne National Lab
Argonne IL 60439
Landholding Agency: Energy
Property Number: 41200720017
Status: Excess
Reasons: Secured Area

Trailers 092, 120, 121, 143
Fermi Natl Accelerator lab
Batavia IL 60510
Landholding Agency: Energy
Property Number: 41200740004
Status: Excess
Reasons: Extensive deterioration

Bldg. 40
Argonne National Lab
DuPage IL 60439
Landholding Agency: Energy
Property Number: 41200820007
Status: Excess
Reasons: Secured Area, Contamination.

Michigan

Bldg. 022
US Coast Guard Station
Marquette MI 49855
Landholding Agency: Coast Guard
Property Number: 88200920004
Status: Excess

Reasons: Secured Area.

Nevada

28 Facilities
Nevada Test Site
Mercury Co: Nye NV 89023
Landholding Agency: Energy
Property Number: 41200310018
Status: Excess
Reasons: Secured Area, Other—contamination

31 Bldgs./Facilities
Nellis AFB
Tonopah Test Range
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200330003
Status: Unutilized
Reasons: Secured Area

42 Bldgs.
Nellis Air Force Base
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200410029
Status: Unutilized
Directions: 49–01, NM104, NM105, 03–35A–H, 03–35J–N, 03–36A–C, 03–36E–H, 03–36J–N, 03–36R, 03–37, 15036, 03–44A–D, 03–46, 03–47, 03–49, 03–88, 03–89, 03–90
Reasons: Secured Area

241 Bldgs.
Tonopah Test Range
Tonopah Co: Nye NV 89049
Landholding Agency: Energy
Property Number: 41200440036
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

10 Bldgs.
Nevada Test Site
Mercury Co: Nye NV 89023
Landholding Agency: Energy
Property Number: 41200610003
Status: Excess
Reasons: Secured Area

New Mexico

Bldgs. 9252, 9268
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41199430002
Status: Unutilized
Reasons: Extensive deterioration

Tech Area II
Kirtland Air Force Base
Albuquerque Co: Bernalillo NM 87105
Landholding Agency: Energy
Property Number: 41199630004
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 26, TA–33
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810004
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 2, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810008
Status: Underutilized
Reasons: Secured Area

Bldg. 5, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810011
Status: Unutilized
Reasons: Secured Area

Bldg. 116, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810013
Status: Unutilized
Reasons: Secured Area

Bldg. 286, TA–21
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810016
Status: Unutilized
Reasons: Secured Area

Bldg. 516, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810021
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 517, TA–16
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199810022
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 31
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199930003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 38, TA–14
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 9, TA–15
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940006
Status: Unutilized
Reasons: Secured Area

Bldg. 141, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940008
Status: Unutilized
Reasons: Secured Area

Bldg. 44, TA–15
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940009
Status: Unutilized
Reasons: Secured Area

Bldg. 2, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940011
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 186, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 188, TA–18
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 44, TA–36
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 45, TA–36
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 258, TA–46
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41199940019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–3, Bldg. 208
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

TA–14, Bldg. 5
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010019
Status: Unutilized
Reasons: Secured Area

TA–21, Bldg. 150
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010020
Status: Unutilized
Reasons: Secured Area

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reasons: Secured Area

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reasons: Secured Area

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reasons: Secured Area

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reasons: Secured Area

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010028
Status: Unutilized
Reasons: Secured Area

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reasons: Secured Area

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020001
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020002
Status: Unutilized
Reasons: Secured Area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reasons: Secured Area

Bldg. 16, TA–3
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020009
Status: Unutilized
Reasons: Secured Area

Bldg. 48, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020017
Status: Unutilized
Reasons: Secured Area

Bldg. 125, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020018
Status: Unutilized
Reasons: Secured Area

Bldg. 162, TA–55
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020019
Status: Unutilized
Reasons: Secured Area

Bldg. 22, TA–33
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 23, TA–49
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020023
Status: Unutilized
Reasons: Secured Area

Bldg. 37, TA–53
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020024
Status: Unutilized
Reasons: Secured Area

Bldg. 121, TA–49
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200020025
Status: Unutilized
Reasons: Secured Area

Bldg. B117
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
Property Number: 41200220032
Status: Excess
Reasons: Extensive deterioration

Bldg. B118
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
Property Number: 41200220033
Status: Excess
Reasons: Extensive deterioration

Bldg. B119
Kirtland Operations
Albuquerque Co: Bernalillo NM 87117
Landholding Agency: Energy
Property Number: 41200220034
Status: Excess
Reasons: Extensive deterioration

Bldg. 2, TA–11
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200240004
Status: Unutilized
Reasons: Secured Area

Bldg. 4, TA–41
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200240005
Status: Unutilized
Reasons: Secured Area

Bldg. 116, TA–21
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200310003
Status: Unutilized
Reasons: Secured Area

Bldgs. 1, 2, 3, 4, 5, TA–28
Los Alamos National Lab
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41200310004
Status: Unutilized
Reasons: Secured Area

Bldgs. 447, 1483
Los Alamos Natl Laboratory
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200410002
Status: Excess
Reasons: Extensive deterioration, Secured Area

Bldg. 99650
Sandia National Laboratory
Albuquerque Co: Bernalillo NM 87185
Landholding Agency: Energy
Property Number: 41200510004
Status: Unutilized
Reasons: Secured Area

Bldgs. 807, 6017 CAMU2 & CAMU3
Sandia Natl Laboratories
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200730001
Status: Unutilized
Reasons: Secured Area

Bldg. 6502
Sandia National Lab
Albuquerque NM 87185
Landholding Agency: Energy
Property Number: 41200810002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area

9 Bldgs.
Los Alamos National Lab
Los Alamos NM
Landholding Agency: Energy
Property Number: 41200920006
Status: Excess
Directions: 08–0026, 08–0030, 08–0065, 16–0193, 16–0242, 16–0244, 16–0897, 16–1489, 55–0107
Reasons: Secured Area

New York

Bldgs. 0087, 0100
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720002
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0134A, 0179A
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720003
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0210, 0211
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0475, 0481
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720005
Status: Excess
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 0629, 0952
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200720006
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 0096
Brookhaven National Lab
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200730004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 0491, 0650
Brookhaven Natl Lab
Upton Co: Suffok NY 11973
Landholding Agency: Energy
Property Number: 41200810003
Status: Excess
Reasons: Secured Area

Bldgs. 0810, 0811, 0901W
Brookhaven Natl Lab
Upton Co: Suffolk NY 11973
Landholding Agency: Energy
Property Number: 41200810004
Status: Excess
Reasons: Secured Area

Bldg. 913T
Brookhaven Natl Laboratory
Upton NY 11973
Landholding Agency: Energy
Property Number: 41200830001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration, Within 2000 ft. of flammable or explosive material

Boat House
USCG Station Eaton's Neck
Northport NY 11768
Landholding Agency: Coast Guard
Property Number: 88200920005
Status: Unutilized
Reasons: Secured Area

North Carolina

Sewage Treatment Facility
USCG Cape Hatteras
Buxton NC 27902
Landholding Agency: Coast Guard
Property Number: 88200920006
Status: Unutilized
Reasons: Secured Area

Pennsylvania

Z–Bldg.
Bettis Atomic Power Lab
West Mifflin Co: Allegheny PA 15122–0109
Landholding Agency: Energy
Property Number: 41199720002
Status: Excess
Reasons: Extensive deterioration

South Carolina

Bldg. 701–6G
Jackson Barricade
Jackson SC
Landholding Agency: Energy
Property Number: 41200420010
Status: Unutilized
Reasons: Secured Area

Bldg. 211–000F
Nuclear Materials Processing Facility
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420011
Status: Excess
Reasons: Secured Area

Bldg. 221–001F
Nuclear Materials Processing Facility
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420015
Status: Excess
Reasons: Secured Area

Bldg. 190–K
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200420030
Status: Unutilized
Reasons: Secured Area

Bldg. 710–015N
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430002
Status: Excess
Reasons: Secured Area

Bldg. 713–000N
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430003
Status: Excess
Reasons: Secured Area

Bldgs. 80–9G, 10G
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430006
Status: Excess
Reasons: Secured Area

Bldgs. 105–P, 105–R
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy

Property Number: 41200430007
Status: Excess
Reasons: Secured Area

Bldg. 183–003L
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430009
Status: Excess
Reasons: Secured Area

Bldg. 221–016F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430014
Status: Excess
Reasons: Secured Area

Bldgs. 221–053F, 054F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430016
Status: Excess
Reasons: Secured Area

Bldgs. 252–003F, 005F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430017
Status: Excess
Reasons: Secured Area

Bldg. 315–M
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430030
Status: Excess
Reasons: Secured Area

Bldg. 716–002A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430040
Status: Excess
Reasons: Secured Area

Bldgs. 221–21F, 22F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430042
Status: Excess
Reasons: Secured Area

Bldg. 221–033F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430043
Status: Excess
Reasons: Secured Area

Bldg. 254–007F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430044
Status: Excess
Reasons: Secured Area

Bldg. 281–001F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430045
Status: Excess
Reasons: Secured Area

Bldg. 281–004F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430046
Status: Excess
Reasons: Secured Area

Bldg. 281–006F
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430047
Status: Excess
Reasons: Secured Area

Bldg. 703–045A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430050
Status: Excess
Reasons: Secured Area

Bldg. 703–071A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430051
Status: Excess
Reasons: Secured Area

Bldg. 754–008A
Savannah River Operations
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430058
Status: Excess
Reasons: Secured Area

Bldg. 186–R
Savannah River Site
Aiken SC
Landholding Agency: Energy
Property Number: 41200430063
Status: Unutilized
Reasons: Secured Area

4 Bldgs.
Savannah River Site
#281–2F, 281–5F, 285–F, 285–5F
Aiken SC
Landholding Agency: Energy
Property Number: 41200430066
Status: Unutilized
Reasons: Secured Area

Bldg. 701–000M
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200430084
Status: Unutilized
Reasons: Secured Area

Bldg. 690–000N
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200440032
Status: Underutilized
Reasons: Secured Area

Facility 701–5G
Savannah River Site
New Ellenton SC
Landholding Agency: Energy
Property Number: 41200530003
Status: Unutilized
Reasons: Extensive deterioration

Bldg. 714–000A
Savannah River Site
Aiken SC
Landholding Agency: Energy
Property Number: 41200620014
Status: Underutilized
Reasons: Secured Area

Bldg. 777–018A
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200620022
Status: Excess
Reasons: Secured Area

Bldgs. 108–1P, 108–2P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200630007
Status: Unutilized
Reasons: Secured Area

Bldg. 701–001P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640002
Status: Unutilized
Reasons: Secured Area

Bldgs. 151–1P, 151–2P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640004
Status: Unutilized
Reasons: Secured Area

Bldg. 191–P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640005
Status: Unutilized
Reasons: Secured Area

Bldg. 710–P
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200640006
Status: Unutilized
Reasons: Secured Area

Bldg. 614–63G
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710006
Status: Unutilized
Reasons: Secured Area

Bldgs. 701–2G, -905–117G

Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710007
Status: Unutilized
Reasons: Secured Area

Bldgs. 108–1R, 108–2R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710010
Status: Unutilized
Reasons: Secured Area

Bldgs. 717–003S, 717–010S
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200710011
Status: Unutilized
Reasons: Secured Area

Facility 151–1R
Savannah River Site
Aiken SC 29802
Landholding Agency: Energy
Property Number: 41200810001
Status: Underutilized
Reasons: Secured Area

Tennessee

Bldg. 9418–1 Y
Y–12 Plant
Oak Ridge Co: Anderson TN 37831
Landholding Agency: Energy
Property Number: 41199810026
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2010
Oak Ridge Natl Laboratory
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200710009
Status: Excess
Reasons: Extensive deterioration, Secured Area

3 Bldgs.
Y–12 Natl Nuclear Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200720001
Status: Unutilized
Directions: 9104–01, 9104–02, 9104–03
Reasons: Secured Area

Bldgs. 1035, 1058, 1061
E. Tennessee Technology Park
Oak Ridge TN
Landholding Agency: Energy
Property Number: 41200730002
Status: Unutilized
Reasons: Extensive deterioration, Secured Area, Contamination

Bldgs. 1231, 1416
E. Tennessee Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200730003
Status: Unutilized
Reasons: Contamination, Extensive deterioration, Secured Area

Bldgs. 413, 1059
E. TN Tech Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200730006
Status: Excess
Reasons: Secured Area, Contamination

Bldgs. 1000, 1008F, 1028
E. TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810005
Status: Excess
Reasons: Secured Area

Bldgs. 1101, 1201, 1501
E. TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810006
Status: Excess
Reasons: Within airport runway clear zone, Secured Area

4 Bldgs.
East TN Technology Park
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810007
Status: Excess
Directions: 1513, 1515, 1515E, 1515H
Reasons: Secured Area

3 Bldgs.
Y–12 National Security Complex
9706–01, 9706–01A, 9711–05
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810008
Status: Unutilized
Reasons: Secured Area

3 Bldgs.
Y–12 National Security Complex
9733–01, 9733–02, 9733–03
Oak Ridge TN 37831 Landholding Agency: Energy
Property Number: 41200810009
Status: Unutilized
Reasons: Secured Area

Bldgs. 9734, 9739
Y–12 National Security Complex
Oak Ridge TN 37831
Landholding Agency: Energy
Property Number: 41200810010
Status: Unutilized
Reasons: Secured Area

Texas

Zone 12, Bldg. 12–20
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200220053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 12–017E, 12–019E
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200320010
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540002
Status: Unutilized
Directions: 12–009, 12–009A, 12–R–009A, 12–R–009B
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–011A
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12–097
NNSA Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200540004

Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldgs. 11–54, 11–54A
Zone 11
Plantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630008
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–002B
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630009
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

4 Bldgs.
12–003, 12–R–003, 12–003L
Zone 12, Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630010
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 12–014
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630011
Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 12–24E
Zone 12
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200630012
Status: Unutilized
Reasons: Secured Area, Within 2000 ft. of flammable or explosive material

Bldg. 11–029, Zone 11
Pantex Plant
Amarillo Co: Carson TX 79120
Landholding Agency: Energy
Property Number: 41200640007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 11–010, T09–031
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200810011
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 4–24, 4–27, 4–29
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200830003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 11–027
Pantex Plant
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200830004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

3 Bldgs.
Pantex Plant
12–0245, 12–041SS, 12–075A
Amarillo TX 79120
Landholding Agency: Energy
Property Number: 41200830005
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 04–024, 04–027, 04–029
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 09–013, 09–125
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840005
Status: Unutilized
Directions: 09–095, 09–126, 09–132, 09–132A, 09–134
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 11–027
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Pantex Plant
Amarillo TX
Landholding Agency: Energy
Property Number: 41200840007
Status: Unutilized
Directions: 12–R–009B,12–0245, 12–041SS, 12–075A
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Washington

79 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620010
Status: Excess
Directions: Infrastructure Facilities
Reasons: Secured Area

87 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99351
Landholding Agency: Energy
Property Number: 41200620011
Status: Excess
Directions: Mobile Offices
Reasons: Secured Area

139 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620012
Status: Excess
Directions: Offices Facilities
Reasons: Secured Area

122 Structures
Hanford Site 100, 300, 400
Richland Co: Benton WA 99352
Landholding Agency: Energy
Property Number: 41200620013
Status: Excess
Directions: Process Facilities
Reasons: Secured Area

[FR Doc. E9–11099 Filed 5–14–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Renewal of Information Collection: 1090–0007 [Formerly 1505–0191], American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey

AGENCY: National Business Center, Federal Consulting Group, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Interior, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Federal Consulting Group within the Department of the Interior is soliciting comments concerning the American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey. The OMB Control Number is changed due to the recent transfer of the Federal Consulting Group from the Department of the Treasury into the Department of the Interior.

DATES: Consideration will be given to all comments received by July 14, 2009.

ADDRESSES: Written comments may be submitted to the Federal Consulting Group, Attention: Ron Oberbillig, 1849 C St, NW., MS 314, Washington, DC 20240–0001. Comments may also be sent by facsimile to (202) 513–7686, or via e-mail to *Ron_Oberbillig@nbc.gov.* Individuals providing comments should reference Customer Satisfaction Surveys.

FOR FURTHER INFORMATION CONTACT: To request additional information or copies of the form(s) and instructions, please write to the Federal Consulting Group, Attention: Ron Oberbillig, 1849 C St, NW., MS 314, Washington, DC 20240–0001, or call him on (202) 513–7677, or send an e-mail to *Ron_Oberbillig@nbc.gov.*

SUPPLEMENTARY INFORMATION:

Title: American Customer Satisfaction Index (ACSI) Government Customer Satisfaction Survey.

OMB Control Number: 1090–0007 [formerly 1505–0191].

Abstract:

The proposed renewal of this information collection activity provides a means to consistently assess, benchmark and improve customer

satisfaction with Federal government agency programs and/or services within the Executive Branch. The Federal Consulting Group of the Department of the Interior serves as the executive agent for this methodology and has partnered with the CFI Group and the University of Michigan to offer the ACSI to Federal government agencies.

The CFI Group, a leader in customer satisfaction and customer experience management, offers a comprehensive model that quantifies the effects of quality improvements on citizen satisfaction. The CFI Group has developed the methodology and licenses it to the National Quality Research Center at the University of Michigan, which produces the American Customer Satisfaction Index (ACSI). This national indicator is developed for different economic sectors each quarter, which are then published in *The Wall Street Journal.* The ACSI was introduced in 1994 by Professor Claes Fornell under the auspices of the University of Michigan, the American Society for Quality (ASQ), and the CFI Group. It monitors and benchmarks customer satisfaction across more than 200 companies and many U.S. Federal agencies.

The ACSI is the only cross-agency methodology for obtaining comparable measures of customer satisfaction with Federal government programs and/or services. Along with other economic objectives—such as employment and growth—the quality of output (goods and services) is a part of measuring living standards. The ACSI's ultimate purpose is to help improve the quality of goods and services available to American citizens.

ACSi surveys conducted by the Federal Consulting Group are completely subject to the Privacy Act 1074, Public Law 93–579, December 31, 1974 (5 U.S.C. 522a). The agency information collection is an integral part of conducting an ACSI survey. The contractor will not be authorized to release any agency information upon completion of the survey without first obtaining permission from the Federal Consulting Group and the participating agency. In no case shall any new system of records containing privacy information be developed by the Federal Consulting Group, participating agencies, or the contractor collecting the data. In addition, participating Federal agencies may only provide information used to randomly select respondents from among established systems of records provided for such routine uses.

There is no other agency or organization which is able to provide the information that is accessible through the surveying approach used in this information collection. Further, the information will enable Federal agencies to determine customer satisfaction metrics with discrimination capability across variables. Thus, this information collection will assist Federal agencies in improving their customer service in a targeted manner which will make best use of resources to improve service to the public.

This survey asks no questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Current Actions: Proposed renewal of collection of information.

Type of Review: Renewal.

Affected Public: Individuals and Households, Businesses and Organizations, State, Local or Tribal Government.

Estimated Number of Respondents: Participation by Federal agencies in the ACSI is expected to vary as new customer segment measures are added or deleted. However, based on historical records, projected average estimates for the next three years are as follows:

Average Expected Annual Number of Customer Satisfaction Surveys: 150.

Respondents: 39,000.

Annual responses: 39,000.

Frequency of Response: Once per survey.

Average minutes per response: 12.0.

Burden hours: 7,800 hours.

Note: it is expected that the first year there will be approximately 100 surveys submitted, the second year 150 surveys submitted, and the third year 200 surveys submitted due to expected growth in the program. The figures above represent an expected average per year over the three-year period.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

All written comments will be available for public inspection by appointment with the Federal Consulting Group at the contact information given in the **ADDRESSES** section. The comments, with names and addresses, will be available for public view during regular business hours. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to extent allowable by law.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: May 11, 2009.

Ron Oberbillig,

Assistant Director (Acting), Federal Consulting Group.

[FR Doc. E9–11318 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14908–B; F–14908–C; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Sitnasuak Native Corporation. The lands are in the vicinity of Nome, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 11 S., R. 32 W.,
Secs. 6 and 7;
Secs. 18 and 32.
Containing 2,317.16 acres.
T. 9 S., R. 33 W.,
Sec. 35.
Containing 640 acres.
T. 9 S., R. 34 W.,
Secs. 29 and 32.
Containing 1,280 acres.
T. 10 S., R. 34 W.,
Secs. 5, 8, and 17.
Containing 1,852.78 acres.
T. 9 S., R. 35 W.,
Secs. 6, 7, and 18.
Containing approximately 350 acres.
T. 9 S., R. 36 W.,
Secs. 12 and 13;
Secs. 24 and 25.
Containing approximately 630 acres.
Aggregating approximately 7,069 acres.

The subsurface estate in these lands will be conveyed to Bering Straits Native Corporation when the surface estate is conveyed to Sitnasuak Native Corporation. Notice of the decision will also be published four times in the Nome Nugget.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Eileen Ford,

Land Transfer Resolution Specialist, Land Transfer Adjudication II.

[FR Doc. E9–11384 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14883–A; F–14883–A2; AK–965 1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Kwethluk, Incorporated. The lands are in the vicinity of Kwethluk, Alaska, and are located in:

Seward Meridian, Alaska

T. 6 N., R. 67 W.,
Secs. 1, 2, 3, 6, and 7;
Secs. 10 to 15, inclusive;
Secs. 18 and 19;
Secs. 23 to 26, inclusive;
Secs. 29 and 30;
Secs. 32, 33, and 35.
Containing approximately 13,563 acres.
T. 7 N., R. 67 W.,
Secs. 8, 9, and 10;
Secs. 13 to 16, inclusive;
Secs. 21 to 27, inclusive;
Secs. 31, 34, 35, and 36.
Containing approximately 10,869 acres.
T. 8 N., R. 67 W.,
Secs. 15 and 16;
Secs. 21 to 28, inclusive.
Containing approximately 6,143 acres.
Aggregating approximately 30,575 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Kwethluk, Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Linda L. Keskitalo,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–11386 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6664–A, AA–6664–B, AA–6664–F; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to The English Bay Corporation. The lands are in the vicinity of Nanwalek, Alaska, and Kenai Fjords National Park, Alaska, and located in:

Seward Meridian, Alaska

T. 6 S., R. 4 W.,
Sec. 7.
Containing 613 acres.
T. 7 S., R. 5 W.,
Sec. 4.
Containing 230 acres.
T. 11 S., R. 15 W.,
Tracts 37, 38, and 39.
Containing 21.589 acres.
T. 9 S., R. 16 W.,
Sec. 25.
Containing 0.13 acres.

The subsurface estate in these lands will be conveyed to Chugach Alaska Corporation when the surface estate is conveyed to The English Bay Corporation. Notice of the decision will also be published four times in the Homer Alaska Tribune.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30

days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jennifer L. Noe,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–11385 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19148–13, F–19148–14; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Arctic Slope Regional Corporation. The lands are along the Colville River, Alaska, and are located in:

Lands *Outside* the National Petroleum Reserve In Alaska Umiat Meridian, Alaska

T. 1 S., R. 1 W.,
Secs. 16 to 21, inclusive.
Containing approximately 1,332 acres.
T. 1 S., R. 2 W.,
Secs. 23 to 28, inclusive;
Secs. 31 to 35, inclusive.
Containing approximately 2,266 acres.
T. 2 S., R. 2 W.,
Secs. 3 to 6, inclusive.
Containing approximately 1,624 acres.
T. 2 S., R. 3 W.,
Sec. 1;
Secs. 11 to 21, inclusive;
Sec. 30.
Containing approximately 4,017 acres.
T. 2 S., R. 4 W.,
Sec. 13;
Secs. 21 to 35, inclusive.
Containing approximately 3,984 acres.
T. 3 S., R. 4 W.,
Sec. 6.
Containing approximately 437 acres.
T. 2 S., R. 5 W.,
Secs. 35 and 36.
Containing approximately 110 acres.
T. 3 S., R. 5 W.,
Secs. 1, 2, and 3;
Secs. 7 to 12, inclusive;
Secs. 14 to 21, inclusive;
Sec. 30.
Containing approximately 6,014 acres.
T. 3 S., R. 6 W.,
Secs. 13, 24, 25, and 26;
Secs. 33, 34, and 35.
Containing approximately 802 acres.
T. 4 S., R. 6 W.,
Secs. 2 to 8, inclusive;
Secs. 17 and 18.
Containing approximately 2,651 acres.
T. 4 S., R. 7 W.,
Secs. 10 to 17, inclusive;
Secs. 19 to 23, inclusive;
Sec. 30.
Containing approximately 4,241 acres.
T. 4 S., R. 8 W.,
Secs. 22 to 29, inclusive;
Secs. 32 to 36, inclusive.
Containing approximately 3,368 acres.
T. 5 S., R. 8 W.,
Secs. 3, 5, 6, and 7.
Containing approximately 1,622 acres.
Aggregating approximately 32,468 acres.

Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until June 15, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Michael Bilancione,

Land Transfer Resolution Specialist, Land Transfer Adjudication I.

[FR Doc. E9–11382 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2009–N0091; 20124–1113–0000–F5]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: The following applicants have applied for scientific research permits to conduct certain activities with endangered species under the Endangered Species Act of 1973, as amended (Act). The Act requires that we invite public comment on these permit applications.

DATES: To ensure consideration, written comments must be received on or before June 15, 2009.

ADDRESSES: Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 6034, Albuquerque, NM 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave., SW., Room 6034, Albuquerque, NM. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Endangered Species Division, P.O. Box 1306, Albuquerque, NM 87103; (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time.

While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Permit TE–212451

Applicant: Peter Ortiz, Houston, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for the following species: Houston toad (*Bufo hustonensis)*, Monito gecko (*Sphaerodactylus micropithecus)*, green sea turtle (*Chelonia mydas)*, hawksbill sea turtle (*Eretmochelys imbricate)*, leatherback sea turtle (*Dermochelys coriacea)*, Puerto Rican boa (*Epicrates inornatus)*, Virgin Island tree boa (*Epicrates monensis granti)*, black-capped vireo (*Vireo atricapillus)*, golden-cheeked warbler (*Dendroica chrysoparia)*, brown pelican (*Pelecanus occidentalis)*, interior least tern (*Sterna antillarum)*, Roseate tern (*sterna dougalii dougalii)*, whooping crane (*Grus Americana)*, Mississippi sandhill crane (*Grus canadensis pulla)*, red-cockaded woodpecker (*Picoides borealis)*, Puerto Rican sharp-shinned hawk (*Accipiter striatus venator)*, Puerto Rican plain pigeon (*Columbia inornata wetmorei)*, Puerto Rican nightjar (*Caprimulgus noctitherus)*, yellow-shouldered blackbird (*Agelaius xanthomus xanthomus)*, Attwater's greater prairie-chicken (*Tympanuchus cupido attwateri)*, California condor (*Gymnogyps californiananus)*, masked bobwhite (*Colinus virgianus ridgwayi)*, northern aplomado falcon (*Falco femoralis septentrionalis)*, southwestern willow flycatcher (*Empidonax traillii extimus)*, Yuma clapper rail (*Rallus longirostris yumanensis)*, Cape Sable seaside sparrow (*Ammodramus maritimus mirabilis)*, Everglade snail kite (*Ammodramus svannarum floridanus)*, and wood stork (*Mycteria Americana)* throughout the entire range of these species within the jurisdiction of the U.S. Fish and Wildlife Service, specifically the Southwest and Southeast Regions.

Permit TE–212896

Applicant: University of Florida, Gainesville, Florida.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for humpback chub (*Gila cypha)* within Arizona.

Permit TE–213424

Applicant: Jonah Evans, Boerne, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of black-capped vireo (*Vireo atricapillus)* and golden-cheeked warbler (*Dendroica chrysoparia)* within Texas.

Permit TE–006655

Applicant: Logan Simpson Design, Tempe, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus)* within Utah.

Permit TE–144755

Applicant: Reagan Smith Energy Solutions, Oklahoma City, Oklahoma.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of red-cockaded woodpeckers (*Picoides borealis*) within Arkansas, Texas, Louisiana, Alabama, Mississippi, Kentucky, Florida, South Carolina, Georgia, Oklahoma, Virginia, North Carolina, and Tennessee.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: May 6, 2009.

Thomas L. Bauer,

Acting Regional Director, Southwest Region, Fish and Wildlife Service.

[FR Doc. E9–11372 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Availability of a Finding of No Significant Impact for the Wireless Telecommunication Plan/ Environmental Assessment; Rock Creek Park, Washington, DC

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice of Availability of a Finding of No Significant Impact for the Wireless Telecommunication Plan and Environmental Assessment, Rock Creek Park, Washington, DC.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), and to 40 CFR 1501.4(e), the National Park Service (NPS) has prepared, and hereby announces the availability of a Notice of Availability of a Finding of No Significant Impact (FONSI) for the Wireless Telecommunication Plan and Environmental Assessment, Rock Creek Park, Washington, DC. The plan will provide all administered units of Rock Creek Park with a consistent framework for protecting park resources during the consideration of ''right-of-way permit'' applications and other inquiries submitted to the park for the construction, operation, and maintenance of wireless telecommunication facilities (WTF).

The FONSI includes a project background, a description of the relevant legal authorities impacting the Wireless Telecommunications Plan, a description of the selected alternative, a synopsis of other alternatives considered, a description of the environmentally preferable alternative, a discussion of why the selected alternative will not have a significant impact on the human environment, how it will not impair park resources or values, and a description of public involvement in the planning process. Pursuant to NPS policy, it also includes as attachments responses to public comments and errata sheets

DATES: The FONSI is dated January 29, 2009, and it is available on the Planning Environment and Public Comment (PEPC) Web site at *http://www.parkplanning.nps.gov/rocr.*

ADDRESSES: Copies of the FONSI can be requested in person at Rock Creek Park, 3545 Williamsburg Lane, NW., Washington, DC 20008, or by phone (202) 895–6000.

FOR FURTHER INFORMATION CONTACT: Adrienne Applewhaite-Coleman, Superintendent, Rock Creek Park: 3545 Williamsburg Lane, NW., Washington, DC 20008; (202) 895–6004; or by e-mail: *Adrienne_Applewhaite-Coleman@nps.gov.*

SUPPLEMENTARY INFORMATION: The FONSI summarizes one selected alternative that meets the goals of both the preferred alternative and the preferred environmental alternative for siting WTF within Rock Creek Park. The document also describes the other alternatives, but does not provide an analysis. The alternatives analysis can be found in the Wireless Telecommunication Plan and Environmental Assessment. The selected alternative outlined in the FONSI will guide the future siting, building and permitting of WTF in Rock Creek Park. The NPS decided to develop this Plan in its 2003 FONSI on the 2003 Environmental Assessment of the park's existing WTF, which resulted from litigation about those WTF.

Selected Alternative

Under the selected alternative, the park has identified areas where coverage gaps for wireless telecommunication service exist and encourages applicants to site facilities in these areas provided no conflicts with the park mission and planned uses exist. In these areas,

permit terms and conditions are included to ensure protection of sensitive resources. These areas are located mainly along Beach Drive in the main unit of Rock Creek Park. If applications for WTF right-of-way permits are received for outside the area identified as having a coverage gap, the selected alternative identifies zones or areas of the park where WTF may not be allowed, and identifies zones or areas where they may be considered an appropriate use. In the potential locations, applications to construct and operate WTF would also be subject to permit terms and conditions specific to that area or zone. Consideration of WTF and permit terms and conditions will be based on the General Management Plan or the individual management document for each park unit in Rock Creek Park, as applicable, and will include elements such as the design and location requirements for a proposed facility in a particular location.

The selected alternative also includes elements identified in the Wireless Telecommunications Plan and Environmental Assessment as common to the action alternatives and in some instances to the no-action alternative as well.

These are that:

- All applications are subject to compliance with the applicable laws, regulations, policies, and guidelines outlined in ''Chapter 1: Purpose of and Need for Action.''
- Co-location on the two existing monopoles will be handled as in the current permit for WTF in Rock Creek Park.
- Areas that lack in-car coverage are considered to have a coverage gap.
- All associated cables for WTF (electrical, telephone, and fiber optic) cannot be above ground.
- No fencing is permitted around WTF and their associated structures.
- Applications must include an analysis of locations outside the park that could provide similar levels of service, if available.
- Only WTF using the newest technology will be considered, following the intent of all applicable authorities to facilitate the build out of new WTF service, and conforming to the NPS Management Policies 2006 direction to require the ''best technology available.''
- WTF will not be considered in certain areas of the park because of desired conditions stated in the park's General Management Plan and other applicable management documents, which is provided for by the applicable authorities.
- Applicants are required to conform to the physical requirements for WTF facilities, such as height and lighting, directed by applicable authorities.

Finally, as a result of a recent suggestion by U.S. Fish and Wildlife Service for future study on the effects of WTF radiation on birds, a topic upon which there is no U.S. field data, the National Park Service will seek funding and work with U.S. Fish and Wildlife Service to develop such a study, the results of which will be considered when available.

Other Alternatives Considered

The Wireless Telecommunications Plan/Environmental Assessment evaluated two other alternatives:

Alternative A—No-Action Alternative: Under the No-Action alternative, right-of-way permit applications for WTF within any unit of Rock Creek Park would continue to be evaluated by the National Park Service in accordance with applicable authorities and RM–53. Requests for WTF siting in all areas of the park would be reviewed in the context of the General Management Plan or the individual management document for each park unit within Rock Creek Park to determine if WTF siting would be acceptable in the requested area of the park. WTF applications would continue to be considered without a more structured process or plan for the evaluation of such requests than is currently in place. This alternative was not selected because it fails to provide a foundation for decision-making regarding the issuance of right-of-way permits, fails to establish criteria or identify areas where WTF would or would not be appropriate and fails to identify conditions under which WTF would be permitted.

Alternative B—Zone Management: Under Alternative B applications would be reviewed and evaluated for WTF following RM–53, as described under the no-action alternative. Alternative B would add additional considerations to the process by identifying zones or areas of the park where WTF may not be allowed or where they would be considered an appropriate use based on the General Management Plan or the management documents for each park unit within Rock Creek Park. These permit terms and conditions are shown in Table 1, and are also included in the selected alternative, Alternative C. In areas where a WTF may be considered appropriate, applications for a right-of-way permit to construct and operate a WTF could be sited and would be subject to certain permit terms and conditions specific to the area or zone proposed for the facility. This alternative was not selected because it does not best address how in-car coverage gaps will be addressed.

Both of these alternatives would result in a less efficient use of National Park Service time and staff than the selected alternative.

Dated: April 22, 2009.

Margaret O'Dell.

Regional Director, National Capital Region.

[FR Doc. E9–11376 Filed 5–14–09; 8:45 am]

BILLING CODE 4312–34–P

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan/ Environmental Assessment, Carter G. Woodson Home National Historic Site, District of Columbia

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to Prepare an Environmental Assessment for the General Management Plan, Carter G. Woodson Home National Historic Site.

SUMMARY: Under the provisions of the National Environmental Policy Act, the National Park Service (NPS) is preparing an Environmental Assessment (EA) for the General Management Plan (GMP) for Carter G. Woodson Home National Historic Site. The GMP will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in the national historic site over the next 20 years. Based on determinations of desired conditions, the GMP will outline the kinds of resource management activities, visitor activities, land acquisition and development that would be appropriate in the park in the future. The responsible official for the EA is the Regional Director, National Capital Region. To date, the NPS has conducted two public scoping meetings.

DATES: As part of the initial planning efforts, the NPS initiated public scoping for this project on October 2, 2008, with a public scoping meeting held at the 93rd Annual Association for the Study of African American Life and History (ASALH) Convention in Birmingham, Alabama. An additional public scoping meeting was held in the District of Columbia on November 12, 2008. The NPS will continue public scoping for an additional 45 days from the date of publication of this notice in the **Federal Register**.

ADDRESSES: There are two opportunities to formally comment on the project—during this public scoping period and again following release of the draft

GMP/EA. You may submit comments on the NPS's Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/cawo.* Comments on this proposed action may also be mailed or hand-delivered to: Superintendent Gayle Hazelwood, c/o GMP for the Carter G. Woodson Home National Historic Site, National Capital Parks East, 1900 Anacostia Drive, SE., Washington, DC 20020–6722.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. Although 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. We will make all submissions from organizations, businesses, or individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent Gayle Hazelwood, National Capital Parks East, at 1900 Anacostia Drive, SE., Washington, DC 20020–6722, by telephone at (202) 690–5127, or telefax at (202) 690–1425. Information will also be available online throughout the scoping and planning process at *http://parkplanning.nps.gov/cawo.*

SUPPLEMENTARY INFORMATION: Carter G. Woodson Home National Historic Site is in Washington, DC. Congress authorized the site on December 19, 2003, and charged NPS with the responsibility to acquire and manage the site in accordance with this Act and with laws generally applicable to units of the National Park System, including the Act of August 25, 1916 (16 U.S.C. 1, 2–4) and the Act of August 21, 1935 (16 U.S.C. 461 *et seq.*). The enabling legislation also states that the Secretary of the Interior may acquire any of the three properties immediately north of the Carter G. Woodson Home, may enter into an agreement with public or private entities to restore and rehabilitate the Woodson Home and other properties within the boundary, and may enter into cooperative agreements with public or private entities to provide public interpretation and education of African-American heritage in the Shaw area of the District of Columbia. Further, the legislation allows the Secretary of the Interior to ''* * * enter into an agreement with The Association for the Study of African-American Life and History that allows the association to use a portion of the historic site for its own administrative purposes.''

Alternatives will be developed through this planning process. Major issues considered during this process will include the protection and interpretation of the Carter G. Woodson Home, adaptive re-use of historic structures, quality of visitor experience, land acquisition, and potential relationships with The Association for the Study of African American Life and History and other potential agencies, organizations, and local interests.

Dated: April 27, 2009.

Margaret O'Dell,

Regional Director, National Capital Region.

[FR Doc. E9–11378 Filed 5–14–09; 8:45 am]

BILLING CODE 4312–JK–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT01000–09–L51010000–ER0000–24–1A00]

Notice of Availability of Draft Environmental Impact Statement for the Mona to Oquirrh Transmission Corridor Project and Draft Pony Express Resource Management Plan Amendment, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321 *et seq.*), the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (DEIS) for the Mona to Oquirrh Transmission Corridor Project and Draft Pony Express Resource Management Plan (RMP) Amendment and by this Notice is announcing the opening of the comment period.

DATES: To ensure comments will be considered, the BLM must receive written comments on the Mona to Oquirrh Transmission Corridor Project DEIS within 90 days following the date the Environmental Protection Agency publishes a Notice of Availability in the **Federal Register**. The BLM will announce future meetings or hearings and any other public involvement activities at least 15 days in advance through the Utah BLM Web site (*http://www.blm.gov/ut/st/en/fo/salt_lake/planning/mona_to_oquirrh_transmission.html*), public notices, media news releases, and/or mailings.

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

- *E-mail: UT_M2OTL_EIS@blm.gov.*
- *Fax:* (801) 977–4397 or (435) 743–3135.
- *Mail:* Mike Nelson, Realty Specialist, BLM Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119, or Clara Stevens, Realty Specialist, BLM Fillmore Field Office, 35 East 500 North, Fillmore, UT 84631.

Copies of the Mona to Oquirrh Transmission Corridor Project DEIS are available in the Salt Lake Field Office and Fillmore Field Office at the above addresses.

FOR FURTHER INFORMATION CONTACT:

- Mike Nelson at the BLM Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, UT 84119; by phone: (801) 977–4300; or
- Clara Stevens at the BLM Fillmore Field Office, 35 East 500 North, Fillmore, UT 84631; by phone: (435) 743–3100.

SUPPLEMENTARY INFORMATION: Rocky Mountain Power has submitted a right-of-way application for a double-circuit 500/345 kilovolt (kV) transmission line from the existing Mona Substation, located in Juab County, to the existing Oquirrh Substation and Terminal Substation located in Salt Lake County, Utah. The Mona to Oquirrh Transmission Corridor Project also includes the siting of two new future substations and a Salt Lake Field Office (SLFO) Pony Express RMP Amendment for utility corridors. The corridor to be established by this amendment would be wide enough to accommodate potential future utility rights-of-way, including a possible second future double-circuit 500kV line, if and when needed. The estimated length of the proposed transmission line route is approximately 140 miles. A right-of-way of up to 300 feet in width would be required to construct, operate, and maintain the transmission line and structures. The proposed project would take approximately 18 months to construct.

To simplify the analysis of alternatives, the project area has been divided into three major areas: (1) From the future Mona Annex Substation to the future Limber Substation, (2) from the future Limber Substation to the existing Oquirrh Substation, and (3) from the future Limber Substation to the existing Terminal Substation.

Mona Annex to Limber: There are six alternative transmission line routes that connect the future Mona Annex Substation to the future Limber Substation with a double-circuit 500kV transmission line, ranging from 65.3 to

67.7 miles in length. The routes cross portions of Juab, Utah and Tooele Counties.

Limber to Oquirrh: There are six alternative transmission line routes that connect the future Limber Substation to the existing Oquirrh Substation with a double-circuit 345kV transmission line, ranging from 28.9 to 49.0 miles in length. The routes cross portions of Tooele and Salt Lake Counties.

Limber to Terminal: There are two alternative transmission line routes that connect the future Limber Substation to the existing Terminal Substation with a double-circuit 345kV transmission line, ranging from 40.0 to 45.1 miles in length. The routes cross portions of Tooele and Salt Lake counties.

The proposed transmission line(s) right-of-way (ROW) alignment would fall outside of current utility corridors designated by the BLM in the SLFO Pony Express RMP. For the project to be in conformance with the Pony Express RMP, this RMP would be amended to designate a new utility corridor. The DEIS addresses the establishment of a new utility corridor that would accommodate the proposed transmission line ROW.

The planning issues for the RMP amendment include:

- Access to and transportation on the public lands.
- Existing and planned land uses, including recreation, transportation, agriculture, grazing, rights-of-way, and other authorized land uses.
- Wildlife habitat and management of summer and winter ranges and migration corridors for antelope, mule deer, and elk.
- Cumulative effects of land uses and human activities on threatened, endangered, candidate, and sensitive species and their habitats.
- Vegetation, including impacts of invasive non-native species.
- Cultural, historic and paleontological resources and tribal values.
- Management objectives in the North Oquirrh Management Area.
- Visual resource management.
- Air, soil, and water resources.
- Sociology and economics.
- Human health and safety.

An interdisciplinary approach was used to develop the DEIS, in order to consider the variety of resource issues and concerns identified. An amendment to the Pony Express RMP would be based upon the following planning criteria:

- The amendment will be completed in compliance with the Federal Land Policy Management Act, NEPA, and all other relevant Federal law, Executive Orders, and management policies of the BLM;
- Where existing planning decisions are still valid, those decisions will remain unchanged and be incorporated into the new amendment; and
- The amendment will recognize valid existing rights.

Please note that public comments and information submitted including names, street addresses, and e-mail addresses of respondents will be available for public review and disclosure at the above address during regular business hours (8 a.m. to 4 p.m.), Monday through Friday, except holidays. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Selma Sierra,

State Director.

[FR Doc. E9–11297 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of the Draft General Management Plan and Draft Environmental Impact Statement for Effigy Mounds National Monument, Iowa

AGENCY: National Park Service.

ACTION: Notice of Availability of the Draft General Management Plan and Draft Environmental Impact Statement for Effigy Mounds National Monument, Iowa.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service announces the availability of a Draft General Management Plan (GMP)/Environmental Impact Statement (EIS) for Effigy Mounds National Monument (Monument), Iowa.

DATES: The GMP/EIS will remain available for public review for 60 days following the publishing of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency. Public meetings will be held during the 60-day review period on the GMP/EIS, and specific dates and locations will be announced in local and regional media sources of record and on the NPS planning Web site at *http://parkplanning.nps.gov/efmo*.

ADDRESSES: Copies of the GMP/EIS are available by request by writing to Superintendent Phyllis Ewing, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa 52146, or by telephoning 563–873–3491. The document is also available to be picked-up in person at the address above. The document can be found on the Internet on the NPS Planning Web site at: *http://parkplanning.nps.gov/efmo*.

You may submit your comments by any of several methods. You may comment via the Internet through the NPS planning Web site *http://parkplanning.nps.gov/efmo*; simply click on the link to the Effigy Mounds National Monument. You may mail comments to Superintendent Ewing, Effigy Mounds National Monument, at the address above. Finally, you may hand-deliver comments to the park headquarters at the address above.

FOR FURTHER INFORMATION CONTACT: Superintendent Phyllis Ewing, Effigy Mounds National Monument, 151 Highway 76, Harpers Ferry, Iowa 52146, telephone 563–873–3491.

SUPPLEMENTARY INFORMATION: The Monument was established by presidential proclamation on October 25, 1949 to protect significant prehistoric earth mounds found in northeast Iowa. Subsequent legislation expanded the purpose and significance by specifying the wildlife, scenic, and other natural values of the area. The Monument's authorized boundary was expanded in 1961 and again in 2000 until it now encompasses a total of 2,256 acres.

The purpose of the GMP is to set forth the basic management philosophy for the Monument and to provide strategies for addressing issues and achieving identified management objectives. The GMP/EIS describes and analyzes the environmental impacts of the proposed action and one other action alternative for the future management direction of the Monument. A no action alternative is also evaluated.

The preferred alternative (Alternative B) in the draft General Management Plan would provide an enhanced visitor experience with increasing understanding of the monument while protecting and preserving natural and cultural resources. An overall goal for the park would be to serve as a catalyst for mound research and management in the region. A new multi-purpose facility in the visitor center area would accommodate research needs and a small visitor contact station on newly

acquired land contiguous to the Sny Magill unit would allow visitors regular access to this area. In addition to the recommended boundary addition at Sny Magill, the draft plan also recommends three other tracts be added in order to protect resources and to support park operations.

Before including your address, telephone number, electronic mail address, or other personal identifying information in your comments, you should be aware that your entire comment (including your personal identifying information) may be made publicly available at any time. While you can ask us in your comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 2, 2009.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. E9–11370 Filed 5–14–09; 8:45 am]

BILLING CODE 4312–93–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–260–09–1060–XQ–24 1A]

Wild Horse and Burro Advisory Board; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Announcement of meeting.

SUMMARY: The Bureau of Land Management (BLM) announces that the Wild Horse and Burro Advisory Board will conduct a meeting on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands.

DATES: The Advisory Board will meet Monday, June 15, 2009, from 8 a.m. to 5 p.m., local time. This will be a one day meeting.

ADDRESSES: The Advisory Board will meet in Sacramento, California at the Red Lion Hotel at Arden Village. The Red Lion's address is 1401 Arden Way, Sacramento, California 95815. Their phone number is 1–916–922–8041 and their e-mail is *http://www.redlionsac.com*.

Written comments pertaining to the Advisory Board meeting should be sent to: Bureau of Land Management, National Wild Horse and Burro Program, WO–260, Attention: Ramona DeLorme, 1340 Financial Boulevard, Reno, Nevada 89502–7147. Submit written comments pertaining to the Advisory Board meeting no later than close of business June 10, 2009. See the **SUPPLEMENTARY INFORMATION** section for electronic access and filing address.

FOR FURTHER INFORMATION CONTACT: Ramona DeLorme, Wild Horse and Burro Administrative Assistant, at 775–861–6583. Individuals who use a telecommunications device for the deaf (TDD) may reach Ms. DeLorme at any time by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Public Meeting

Under the authority of 43 CFR part 1784, the Wild Horse and Burro Advisory Board advises the Secretary of the Interior, the Director of the BLM, the Secretary of Agriculture, and the Chief of the Forest Service, on matters pertaining to management and protection of wild, free-roaming horses and burros on the Nation's public lands. The tentative agenda for the meeting is:

Monday, June 15, 2009 (8 a.m.–5 p.m.)

8 a.m. Call to Order & Introductions:
8:15 a.m. Old Business:
Approval of March 2009 Minutes.
Update Pending Litigation.
8:45 a.m. Program Updates:
Gathers;
Adoptions;
Facilities;
Forest Service Update.
Break (9:30 a.m.–9:45 a.m.)
9:45 a.m. Program Updates (continued):
Program Accomplishments;
BLM Response to Advisory Board Recommendations.
Lunch (11:45 a.m.–1 p.m.)
1 p.m. New Business:
Break (2:45 p.m.–3 p.m.)
3 p.m. Public Comments
4 p.m. Board Recommendations
4:45 p.m. Recap/Summary/Next Meeting/Date/Site
5 p.m. Adjourn.

The meeting site is accessible to individuals with disabilities. An individual with a disability needing an auxiliary aid or service to participate in the meeting, such as an interpreting service, assistive listening device, or materials in an alternate format, must notify the person listed under **FOR FURTHER INFORMATION CONTACT** two weeks before the scheduled meeting date. Although the BLM will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

The Federal Advisory Committee Management Regulations [41 CFR 101–6.1015(b),] require BLM to publish in the **Federal Register** notice of a meeting 15 days prior to the meeting date.

II. Public Comment Procedures

Members of the public may make oral statements to the Advisory Board on June 15, 2009 at the appropriate point in the agenda. This opportunity is anticipated to occur at 3 p.m., local time. Persons wishing to make statements should register with the BLM by noon on June 15, 2009 at the meeting location. Depending on the number of speakers, the Advisory Board may limit the length of presentations. At previous meetings, presentations have been limited to three minutes in length. Speakers should address the specific wild horse and burro-related topics listed on the agenda. Speakers must submit a written copy of their statement to the address listed in the **ADDRESSES** section or bring a written copy to the meeting.

Participation in the Advisory Board meeting is not a prerequisite for submission of written comments. The BLM invites written comments from all interested parties. Your written comments should be specific and explain the reason for any recommendation. The BLM appreciates any and all comments, but those most useful and likely to influence decisions on management and protection of wild horses and burros are those that are either supported by quantitative information or studies or those that include citations to and analysis of applicable laws and regulations. Except for comments provided in electronic format, speakers should submit two copies of their written comments where feasible. The BLM will not necessarily consider comments received after the time indicated under the **DATES** section or at locations other than that listed in the **ADDRESSES** section.

In the event there is a request under the Freedom of Information Act (FOIA) for a copy of your comments, the BLM will make them available in their entirety, including your name and address. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment-including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. The BLM will release all submissions from organizations or

businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, in their entirety, including names and addresses.

Electronic Access and Filing Address

Speakers may transmit comments electronically via the Internet to: *ramona_delorme@blm.gov*. Please include the identifier ''WH&B'' in the subject of your message and your name and address in the body of your message.

Dated: May 11, 2009.

Bud Cribley,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. E9–11381 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

National Park Service

Boston Harbor Islands National Recreation Area Advisory Council; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Boston Harbor Islands National Recreation Area.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Boston Harbor Islands National Recreation Area Advisory Council will be held on Wednesday, June 3, 2009, at 4 p.m. to 6 p.m. at the Partnership Office, 408 Atlantic Avenue, 2nd Floor, Boston, MA.

This will be the quarterly meeting of the Council. The agenda will include discussion of how to stimulate public participation in park planning and other management efforts, a park update and public comment.

The meeting will be open to the public. Any person may file with the Superintendent a written statement concerning the matters to be discussed. Persons who wish to file a written statement at the meeting or who want further information concerning the meeting may contact Superintendent Bruce Jacobson at (617) 223–8667.

DATES: June 3, 2009 at 4 p.m.

ADDRESSES: Partnership Office, 408 Atlantic Avenue, 2nd Floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Superintendent Bruce Jacobson, (617) 223–8667.

SUPPLEMENTARY INFORMATION: The Advisory Council was appointed by the Director of the National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational/cultural, community and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operations of the Boston Harbor Islands NRA.

Dated: May 4, 2009.

Bruce Jacobson,

Superintendent, Boston Harbor Islands NRA.

[FR Doc. E9–11375 Filed 5–14–09; 8:45 am]

BILLING CODE 4310–86–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–670]

In the Matter of Certain Adjustable Keyboard Support Systems and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Amending the Complaint and 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.4) of the presiding administrative law judge (''ALJ'') in the above-captioned investigation amending the complaint and notice of investigation to correct the name of a respondent.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3041. 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 this investigation on March 9, 2009, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based on a complaint filed on February 10, 2009, by Humanscale Corporation of New York, New York. The Commission named the following two companies as respondents: CompX International, Inc., of Dallas, Texas and CompX Waterloo, of Ontario, Canada. The complaint alleged violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain adjustable keyboard support systems and components thereof that infringe certain claims of U.S. Patent No. 5,292,097. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337. The complainant requested that the Commission issue a limited exclusion order and a cease and desist order.

The ALJ issued the subject ID (Order No. 4) on April 20, 2009. The ID corrects the name of a respondent, essentially amending the complaint and notice of investigation. The complaint and notice of investigation named CompX Waterloo as a proposed respondent, but the correct name for the respondent is ''Waterloo Furniture Components Ltd.'' No petitions for review were filed and the Commission has determined not to review the ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and Commission rule 210.42, 19 CFR 210.42.

By order of the Commission.

Issued: May 8, 2009.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–11365 Filed 5–14–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–651]

In the Matter of Certain Automotive Parts; Notice of Commission Decision Not To Review Two Initial Determinations That Taken Together Terminate the Investigation in Its Entirety; Termination of the 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 the administrative law judge's (''ALJ'') initial determinations (''IDs'') (Order Nos. 30 and 31) in the above-captioned investigation, granting joint motions to terminate the investigation based on a settlement agreement and a consent order, respectively. The Commission has terminated this investigation in its entirety.

FOR FURTHER INFORMATION CONTACT: Jean H. Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3014. Copies of the ALJ's IDs and all other 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: On June 5, 2008, the Commission instituted this investigation, based on a complaint filed by Ford Global Technologies, LLC of Dearborn, Michigan (''Ford''). The complaint alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain automotive parts by reason of infringement of U.S. Design Patent Nos D498,444; D501,162; D510,551; D508,223; D500,717; D539,448; D500,969; or D500,970. The respondents are Keystone Automotive Industries of Pomona, California; LKQ Corporation of Chicago, Illinois; U.S. Autoparts Networks, Inc. (''Autoparts'') of Carson, California; Jui Li Enterprise Co. of Kaohsiung Hsien, Taiwan; YCC Parts Manufacturing Co., Ltd. of Tao-yuan Hsien, Taiwan; TYC Brother Industrial Co., Ltd. of Tainan, Taiwan; Taiwan Kai Yih Industrial Co., Ltd. of Tainan City, Taiwan; and TYG Products L.P. of McKinney, Texas.

On April 3, 2009, Ford and U.S. Autoparts filed a joint motion under Commission rule 210.21(c)(3) to terminate the investigation as to Autoparts based on a consent order. On the same day, Ford and the remaining respondents filed a joint motion to terminate the investigation based on a settlement agreement. On April 16, 2009, the ALJ issued the subject orders, which granted both motions. No petitions for review of either ID were filed. The Commission has determined not to review the IDs.

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: May 8, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–11366 Filed 5–14–09; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–659]

In the Matter of Certain Prepregs, Laminates, and Finished Circuit Boards; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Withdraw the Complaint as To Guangdong Shengyi Sci. Tech Co., Ltd. and To Terminate the 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. 11) granting complainant's motion to withdraw the complaint as to Guangdong Shengyi Sci. Tech Co., Ltd (''Shengyi'') and to terminate the investigation.

FOR FURTHER INFORMATION CONTACT: James A. Worth, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3065. 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 (*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: This investigation was instituted on November 12, 2008, based upon a complaint filed on behalf of Isola USA Corp. of Chandler, Arizona (''Isola'') on October 6, 2008, and supplemented on October 28, 2008. 73 FR 66919 (November 12, 2008). The complaint 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 prepregs, laminates, and finished circuit boards that infringe certain claims of United States Patent Nos. 6,187,852; 6,322,885; and 6,509,414 (''the '414 patent''). The notice of investigation named seven firms as respondents.

On December 22, 2008, the Commission issued notice of its determinations not to review IDs terminating the investigation with respect to respondents Sanmina-SCI Corp. and ITEQ Corp. based on settlement agreements. On January 9, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation with respect to the '414 patent. On May 19, 2009, the Commission issued notice of its determination not to review an ID terminating the investigation as to respondents VENTEC Electronics (Suzhou) Co., Ltd., VENTEC Electronics (HK) Co., Ltd., and VENTEC–Global Laminates USA LLC based on a consent order. On April 10, 2009, the Commission issued notice of its determination not to review an ID granting a joint motion to terminate the investigation as to Taiwan Union

Technology Corp. based on a consent order.

On March 12, 2009, Isola filed a motion pursuant to 19 CFR 210.21(a)(1) to terminate the investigation as to Shengyi on the basis of withdrawal of the complaint. On March 16, 2009, Shengyi filed objections to Isola's motion to withdraw. On March 18, 2009, Isola filed an opposition to the objections. On March 19, 2009, Shengyi filed a reply. Also on March 19, 2009, the Commission investigative attorney filed a response in support of Isola's motion to withdraw the complaint. On April 16, 2009, the ALJ issued the subject ID, granting Isola's motion to withdraw the complaint.

The Commission has determined not to review the subject ID.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

Issued: May 11, 2009.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E9–11367 Filed 5–14–09; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Consolidated Multiple Listing Service, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of South Carolina in *United States of America* v. *Consolidated Multiple Listing Service, Inc.,* No. 3:08–CV–1786–SB. On May 2, 2008, the United States filed a Complaint alleging that Consolidated Multiple Listing Service, Inc. (''CMLS'') violated Section 1 of the Sherman Act, 15 U.S.C. 1, by denying consumers choice of innovative fee-for-service business models available to consumers in other parts of South Carolina and by adopting burdensome prerequisites to membership that prevented some real estate brokers, who would likely compete aggressively on price, from becoming members of CMLS. The proposed Final Judgment, filed on May 4, 2009, requires CMLS to repeal its offending rules and prohibits CMLS from adopting any new rules that exclude or otherwise disadvantage brokers who compete in innovative ways.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 5th Street, NW., Room 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.usdoj.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of South Carolina. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be addressed to John R. Read, Chief, Litigation III Section, Antitrust Division, U.S. Department of Justice, 450 5th Street, NW., Suite 4000, Washington, DC 20530, (202) 307–0468.

J. Robert Kramer II,

Director of Operations, Antitrust Division.

In the United States District Court for the District of South Carolina Columbia Division

United States of America, Plaintiff, v. Consolidated Multiple Listing Service, Inc., Defendant

Civil Action No.
Date: May 2, 2008
Judge:

Complaint for Equitable Relief for Violation of Section 1 of the Sherman Act, 15 U.S.C. § 1

The United States of America, by its attorneys acting under the direction of the Attorney General, brings this civil antitrust action pursuant to Section 4 of the Sherman Act, 15 U.S.C. 4, against Defendant Consolidated Multiple Listing Service, Inc. (''CMLS''), to obtain equitable and other relief to prevent and remedy violations of Section 1 of the Sherman Act, 15 U.S.C. 1.

The United States complains and alleges as follows:

I. Introduction

1. The United States brings this action to prevent CMLS from enforcing rules, regulations, by-laws, policies, and procedures (collectively ''Rules'') that unreasonably restrain competition among real estate brokers in Columbia, South Carolina and the surrounding areas (''Columbia Area'').

2. CMLS is a joint venture comprised of brokers who compete with each other to sell brokerage services in the Columbia Area. CMLS, like other multiple listing services, provides services to its members, including an electronic database of information relating to past and current home listings in the Columbia Area. The database serves as a clearinghouse for the members to communicate information among themselves, such as descriptions of the listed properties for sale and offers to compensate other members if they locate buyers. In addition, the database allows members who represent buyers to search for nearly all the listed properties in the area that match the buyer's needs. By providing an efficient means of exchanging information on home listings, multiple listing services benefit buyers and sellers of real estate, and in turn, buyers of real estate brokerage services, in their service areas.

3. However, that same role makes access to CMLS's database—and therefore membership in CMLS—critically important for any broker seeking to serve clients efficiently in the Columbia Area. Access to the services provided by CMLS is key to being a successful broker, and CMLS is the only provider of such services in the Columbia Area. Therefore, brokers seeking to provide brokerage services in the Columbia Area need to be members of CMLS.

4. CMLS, its Board of Trustees (''Board''), and its members have adopted Rules that govern the conduct and business practices of its approximately 370 members and set standards for the admission of new members. Through these Rules, CMLS's Board and its members have unreasonably inhibited competition over the method of providing brokerage services to consumers in the Columbia Area and have stabilized the price those consumers pay for brokerage services. For example, CMLS's Rules prevent members from providing a set of brokerage services that includes less than the full array of services that brokers traditionally have provided—even if a consumer prefers to save money by purchasing less than all of such services. Additionally, CMLS's Rules require members to use a standard, pre-approved contract that, among other things, prevents its members from offering to a home seller the option of avoiding paying the broker a commission if the seller finds the buyer on her own.

5. CMLS's Rules also require members to conform other aspects of their brokerage businesses in the manner that the group demands. CMLS Rules impose unreasonable objective criteria for membership and contain subjective standards for admission to membership that allow CMLS representatives to deny membership to brokers who might be expected to compete more aggressively or in more innovative ways than CMLS's members would prefer, thereby excluding such brokers or deterring them from seeking membership.

6. Taken together, CMLS's Rules limit competition among brokers, artificially stabilize the price of brokerage services, and deter innovation and the emergence of new brokerage business models. By adopting and enforcing such Rules, CMLS has violated and continues to violate Section 1 of the Sherman Act, 15 U.S.C. 1.

II. Defendant CMLS, Its Board, and Its Members

7. CMLS is organized as a nonprofit corporation under the laws of the State of South Carolina. Its principal place of business is in Columbia, South Carolina, and its service area encompasses the counties of Richland, Lexington, Saluda, Kershaw, Calhoun, Newberry and Fairfield. CMLS is a joint venture comprised of over 370 competing brokers in the Columbia Area. Affiliated with those CMLS members are over 3,100 other licensed real estate professionals doing business in the Columbia Area.

8. Whenever this Complaint refers to any act or deed of CMLS, it means CMLS engaged in the act or deed by or through its members, officers, directors, Board, committees, trustees, employees, staff, agents, or other representatives while they were actively engaged in the management, direction, or control of CMLS's business or affairs.

9. Various persons and entities, not named as defendants in this action, have participated as conspirators with CMLS in the offense alleged in this Complaint, and have performed acts and made statements to further the conspiracy.

III. Jurisdiction and Venue

10. This Court has subject matter jurisdiction over this action under Section 4 of the Sherman Act, 15 U.S.C. 4, and 28 U.S.C. 1331, 1337(a), and 1345.

11. Venue is proper in this District and this Division under 15 U.S.C. 22, 28 U.S.C. 1391(b), and Civil Local Rule 3.01 because CMLS maintains its principal place of business, transacts business, and is found within this District and this Division.

IV. Effect on Interstate Commerce

12. The activities and the violations by CMLS alleged in this Complaint affect consumers located in South Carolina and in other States. CMLS members have provided and continue to provide residential brokerage services to in-state and out-of-State residents seeking to buy or sell real estate in the Columbia Area. In 2005, CMLS members facilitated the sale of real property worth more than $2 billion and they collected commissions of over $125 million for their services. Many of the real properties sold in transactions involving CMLS members are purchased with mortgages from out-of-state lenders and mortgage payments often are made across State lines. CMLS's activities and violations are in the flow of, and have a substantial effect on, interstate commerce.

V. Concerted Action

13. CMLS is a combination or conspiracy among its members, who are brokers that compete with one another in the Columbia Area. The members of CMLS, as a group and through the Board they elect and the staff they indirectly employ, have agreed to, adopted, maintained, and enforced Rules affecting the method of members' provision of brokerage services, participation in CMLS, and access to CMLS's services, including access to the electronic listings database. CMLS's Rules are therefore the product of agreements and concerted action among its members.

VI. Relevant Markets

14. The provision of brokerage services to sellers of residential real property and the provision of brokerage services to buyers of residential real property are relevant service markets within the meaning of the antitrust laws.

15. The brokerage business is local in nature. Most sellers prefer to work with a broker who is familiar with local market conditions. Likewise, most buyers seek to purchase real estate in a particular city, community, or neighborhood, and typically prefer to work with a broker who has knowledge of the area in which they have an interest. The geographic coverage of CMLS's service area establishes the outermost boundaries of the relevant geographic market, although meaningful competition among brokers may occur in narrower local areas.

VII. Background of the Offenses

Industry and Market Power

16. The vast majority of prospective real estate sellers and buyers engage the services of a broker. Brokers in the Columbia Area are in direct competition with each other to provide brokerage services to consumers.

17. CMLS is the only multiple listing service for the Columbia Area. Among other services that CMLS provides its members is the pooling and dissemination of information on the vast majority of properties available for sale in the Columbia Area. CMLS combines its members' real estate listings information into an electronic database and makes these data available to all brokers who are members of CMLS. By listing information about a property for sale with CMLS, a broker can market it efficiently to a large number of potential buyers. A broker representing a buyer likewise can search the CMLS database to provide the buyer with information about the vast majority of the properties for sale in the Columbia Area.

18. CMLS members use the database to, among other things: Communicate to other members the listings information relating to real estate that they have for sale; offer to compensate other members as cooperating brokers if they locate buyers for those listings; and locate real estate for prospective buyers.

19. CMLS also provides records of sold real estate, which are used by brokers working with sellers to set the real property's listing price and to determine what offers to accept. Brokers representing a buyer likewise use the sold data to help buyers determine what price to offer for real estate.

20. Access to CMLS is critical for brokers who wish to serve buyers or sellers successfully in the Columbia Area, and CMLS members account for virtually 100 percent of the real estate brokerage services provided to home buyers and sellers in the Columbia Area. Accordingly, CMLS has market power in the market for real estate brokerage services in the Columbia Area.

Alternative Brokerage Models

21. Brokers who adhere to traditional methods of doing business typically charge a fee calculated as a percentage of the sales price of the real estate. Some brokers outside of the Columbia Area offer alternatives to the traditional methods of providing brokerage services. If brokers offering these alternatives were not restricted from competing in the Columbia Area, they would provide consumers of brokerage services with competitive options and, in the process, would place downward

pressure on the prices charged by brokers offering traditional methods of providing brokerage services. However, CMLS's actions have unreasonably restricted such competition in the Columbia Area, thereby depriving consumers of these options and artificially stabilizing prices.

22. *Fee-for-Service Models.* Some brokers outside of the Columbia Area contract with home buyers and sellers to provide a subset of brokerage services charging only for the services that consumers wish to purchase. Many of these brokers offer their services for a flat fee rather than a percentage of the home's sales price and typically their fees are lower than what traditional brokers charge. One popular service offered by fee-for-service brokers is known as an ''MLS listing only,'' whereby a broker, in exchange for a fee, lists a property on the multiple listing service database, while allowing the seller to handle all other aspects of the transaction. Another fee-for-service package available to consumers outside of the Columbia Area involves the broker handling all aspects of the transaction, except for attending the closing. This is attractive to home sellers who are capable of performing all the necessary closing services themselves, or who have separately retained assistance with the closing, and would prefer not to pay a broker to attend. Through such packages, buyers and sellers can save money by purchasing only the services that they want their broker to provide.

23. *Exclusive Agency Listings.* Outside of the Columbia Area, brokers also are able to offer consumers the opportunity to save money on commissions and fees by offering an ''Exclusive Agency Listing,'' which is an agreement under which the seller pays no commission or fee to his broker if the seller finds the buyer himself.

24. While these and other competitively significant alternatives to the traditional method of providing brokerage services are available to consumers outside of the Columbia Area, CMLS's actions have unreasonably restricted such competition in the Columbia Area.

VIII. Restraints on Competition

25. CMLS has harmed competition among brokers in the Columbia Area to the detriment of consumers. As a result of CMLS's Rules, consumers of brokerage services in the Columbia Area pay higher commissions or fees for brokerage services and have fewer alternatives regarding the method of providing those brokerage services.

26. CMLS achieves these adverse effects by adopting and enforcing the following Rules, among others:

a. CMLS's Rules prohibit its members from competing with one another by offering consumers the sort of fee-for-service brokerage options described in Paragraph 22 above. For example, CMLS's Rules require that its members have ''active involvement'' in all aspects of the transaction, including ''in the marketing, sale, and closing of the property.'' CMLS By-laws, Art. IV. *See also* CMLS Rules, Rule 1(a) (requiring that members only use CMLS's pre-approved contract, which includes Article IV's active involvement language). The Rules also require that ''[o]ffers on properties included in the CMLS shall be made in written form to the Selling Company and not directly to the Owner,'' thereby precluding brokers and home sellers in the Columbia Area from entering into contracts whereby the brokers would let the sellers handle the offers in return for a reduced commission. CMLS Rules, Rule 2. These Rules prohibit brokers and home sellers from negotiating brokerage service terms and, consequently, harm consumers in the Columbia Area because they have fewer brokerage service models from which to choose.

b. CMLS's Rules prohibit its members from competing with one another by offering alternative contractual terms to consumers, such as the Exclusive Agency Listings contract described in Paragraph 23 above. CMLS requires that ''[e]ach listing submitted by a Member shall be in writing on the Exclusive Right to Sell Form as approved by the Board from time to time. No alteration of any kind to the provisions of the Listing Agreement shall be allowed.'' CMLS Rules, Rule 1(a). That same Rule forbids CMLS's members and consumers from ''mak[ing] any agreement * * * which varies, in any way, the provisions of the Listing Agreement.'' This Rule, for example, prevents brokers and home sellers in the Columbia Area from agreeing to an Exclusive Agency Listing whereby the seller would pay no commission or fee to her broker if the seller finds the buyer herself. Consequently, through CMLS, brokers in the Columbia Area have stabilized the commissions and fees they collect, at the expense of Columbia Area consumers.

c. These examples are not exhaustive. Other CMLS Rules have similar anticompetitive effects. CMLS's Rules, coupled with the need to be a CMLS member in order to compete effectively in the Columbia Area, allow brokers who are members of CMLS to prevent innovative or aggressive brokers from competing by denying them membership in CMLS, and to restrict the ways in which existing Columbia Area brokers do business by disciplining existing members who compete too aggressively or in a manner inconsistent with the wishes of other CMLS members. For example, CMLS's Rules require that members be ''primarily in the real estate business within primary areas served by the CMLS.'' CMLS By-laws, Art. III, § 1. CMLS also refuses to admit brokers who do not have commercial offices in the Columbia Area. CMLS Rules, Rule 5(b). These Rules exclude brokers located outside of the Columbia Area or that engage primarily in a business other than real estate, even if such brokers are fully licensed by the State of South Carolina to serve as real estate brokers. Moreover, CMLS provides its Board and officers unfettered discretion to reject applicants for membership, CMLS Rules, Rule 5(c), while simultaneously requiring those potential competitors to provide information about their proposed brokerage models and competitive histories. CMLS By-laws, Art. III, §§ 6–7. In addition to maintaining unfettered discretion over membership decisions, CMLS imposes an excessive initial fee on new members, well above its costs of adding them to the membership. *See* CMLS Rules, Rule 5(b). And, CMLS maintains unfettered discretion to expel or discipline members. CMLS By-laws, Art. III, § 4. Consequently, through CMLS, brokers in the Columbia Area have precluded the entry of aggressive competitors and stifled aggressive competition between members.

27. On April 17, 2008, after the United States informed CMLS of its intention to bring this action, CMLS's counsel told counsel for the United States that it had voted to amend some of its Rules. CMLS's counsel told counsel for the United States that the amendments affect some of the Rules listed in Paragraph 26, but that other of the rules about which the United States complains have not been changed. CMLS has not identified for the United States the precise changes that CMLS made to its Rules despite requests that it do so. Even if CMLS has changed some of its rules, those rules may well continue to violate the antitrust laws. Furthermore, even if CMLS, in the face of this lawsuit, has in fact brought some of its rules into conformity with the antitrust laws, CMLS retains complete discretion to make further changes to those rules that would unduly restrict competition and thus violate the Federal antitrust laws.

28. Taken individually or in conjunction with each other, the Rules restrain trade, and are not reasonably necessary to make a multiple listing service more efficient or effective nor to achieve any other procompetitive benefits. Therefore, the Rules are anticompetitive and, as a result, consumers of brokerage services in the Columbia Area pay higher commissions or fees for brokerage services and have fewer choices among types of brokers and the method of providing the brokerage services they offer.

IX. Violation Alleged

29. CMLS's adoption and enforcement of the Rules described above constitutes a contract, combination, or conspiracy among CMLS and its members that unreasonably restrains competition in the Columbia Area brokerage markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1.

30. The aforesaid contract, combination, or conspiracy has had and will continue to have anticompetitive effects in the relevant markets including: Stabilizing the price of broker commissions and fees; reducing competition on the method of providing brokerage services; raising barriers to entry; and suppressing innovation.

31. This contract, combination, or conspiracy is not reasonably necessary to accomplish any of CMLS's legitimate goals.

X. Request for Relief

Wherefore, the United States prays that final judgment be entered against CMLS declaring, ordering, and adjudging that:

a. The aforesaid contract, combination, or conspiracy unreasonably restrains trade and is illegal under Section 1 of the Sherman Act, 15 U.S.C. 1;

b. CMLS, its members, officers, directors, Board, committees, trustees, employees, agents, representatives, successors, and assigns and all other persons acting or claiming to act on their behalf, be permanently enjoined from engaging in, carrying out, renewing or attempting to engage in, carry out or renew the contract, combination, or conspiracy alleged herein, or any other contract, combination, or conspiracy having a similar purpose or effect in violation of Section 1 of the Sherman Act, 15 U.S.C. 1;

c. CMLS eliminate and cease enforcing any and all Rules that unreasonably restrain trade and be prohibited from otherwise acting to unreasonably restrain trade; and

d. The United States be awarded its costs of this action and such other relief as may be appropriate and as the Court may deem just and proper.

Dated: May 2, 2008.

For Plaintiff The United States of America

/s/ _____
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Assistant Attorney General.

/s/ _____
David L. Meyer,
Deputy Assistant Attorney General.

/s/ _____
J. Robert Kramer II,
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/s/ _____
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United States District Court for the District of South Carolina Columbia Division

United States of America, Plaintiff, v. Consolidated Multiple Listing Service, Inc., Defendant

Case No. 3:08–CV–01786–SB

Date: May 8, 2009

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceedings

The United States brought this lawsuit against Defendant Consolidated Multiple Listing Service, Inc. (''CMLS'') on May 2, 2008, to stop CMLS from violating Section 1 of the Sherman Act, 15 U.S.C. 1, by excluding and restricting new forms of competition and harming consumers of real estate brokerage services throughout the Columbia, South Carolina area. CMLS is a joint venture of nearly all active residential real estate brokers in the Columbia area. It controls access to the Columbia real estate brokerage market because it operates the area's only multiple listing service (''MLS''), a database of nearly all homes for sale through a broker. Because local brokers effectively need to be members of CMLS to be in business, CMLS has the power to dictate how brokers can compete and to exclude brokers who plan to compete in ways that traditional brokers do not like.

The United States' complaint alleged that CMLS used this power to adopt rules that disrupted the competitive process by impeding the ability of innovative brokers to enter the Columbia market and challenge the competitive methods of CMLS's existing members. CMLS required brokers to be actively involved in all aspects of each real estate transaction, even if their clients desired fewer services at a lower cost. It prohibited brokers from entering ''exclusive agency'' agreements with sellers under which the seller would owe no commission if he or she, rather than the broker, found a buyer. Brokers who hoped to lower their overhead by working from home offices or who were located in other areas but wanted to offer their services to home buyers and sellers in Columbia were denied membership in CMLS. CMLS charged applicants for membership a nonrefundable $5,000 initiation fee and demanded that they appear before a membership committee composed of the applicant's prospective competitors to discuss ''the nature of [their] business[es].'' If CMLS's board members did not like applicants or wanted to avoid competing with them, they could vote to reject the application.

As a result of these policies, consumers in Columbia were denied the benefits that innovative brokers have brought to real estate markets in other parts of South Carolina and around the country. Not only were Columbia-area home sellers unable to hire brokers with innovative business models—such as ''fee-for-service'' brokers who would provide only the services the sellers desired at a lower cost than full service brokers typically charged—consumers in Columbia paid more for brokerage services than consumers in other markets.

On May 4, 2009, the United States filed a Stipulation and proposed Final Judgment. The proposed Final Judgment, which is described more fully below, is designed to eliminate the harm to competition caused by CMLS's policies and restore competition to the

real estate brokerage market in Columbia. It requires CMLS to repeal its offending rules and prohibits CMLS from adopting any rules or practices that exclude or otherwise disadvantage brokers who compete in innovative ways.

The United States and CMLS have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

A. Description of the Defendant and Its Activities

CMLS is owned by, and its membership consists of, real estate brokers who compete with each other to represent buyers and sellers of homes in the Columbia area. It operates the Columbia area's only MLS, a listing service that maintains a database of nearly all homes for sale through a broker. Brokers in Columbia regard membership in CMLS to be critical to their ability to compete effectively for buyers and sellers. By joining CMLS, brokers in Columbia can promise their seller clients that information about the seller's property will immediately be shared with virtually all other brokers in the area. Brokers who work with buyers can likewise promise their buyer customers access to the widest possible array of properties listed for sale through brokers.

CMLS is controlled by its Board of Trustees, which has been dominated by traditional brokerage firms. For example, of the nine CMLS Board members in 2008, eight represented traditional, high-end brokerage firms that do not employ discount or alternative business models. The CMLS Board possessed the power to approve or deny membership applications, propose by-laws (subject to membership approval), and make rules for members. All CMLS member brokers must agree, in writing, to follow the CMLS rules as a condition of membership.

Like MLSs in other areas, CMLS possesses substantial market power. To compete successfully in Columbia, a broker must be a member of CMLS; to be a member, a broker must adhere to any restrictions that CMLS's Board imposes. Unlike most other MLSs, however, CMLS exercised this market power to regulate how brokers in Columbia were allowed to compete and to enact burdensome prerequisites to membership that prevented some real estate brokers, such as those who would likely compete aggressively on price, from becoming members of CMLS, ensuring that those brokers could not compete in the Columbia area.

B. Industry Background

The prices that Columbia-area consumers paid for brokerage services increased substantially from 2001 to 2007. Brokers who adhere to traditional methods of doing business typically charge a commission calculated as a percentage of the sales price of the home. As housing prices in Columbia (as in many other parts of the country) increased during that time period, commission fees that consumers paid traditional, full-service brokers also increased.

Outside Columbia, brokers responded to the higher home prices and increasing fees by competing in new ways. Many brokers outside Columbia have adopted fee-for-service business models under which home sellers pay a flat fee for specific services they want their broker to perform. Home sellers who choose fee-for-service brokers and who, for instance, take responsibility for marketing their own homes, negotiating their own contracts, or attending closing without broker assistance can substantially reduce the fees they pay their brokers. Many home sellers in markets outside of Columbia have opted to purchase only a single brokerage service: Having the broker submit information about the seller's property to the MLS. Some brokers offer an MLS-entry-only service for only a few hundred dollars (with an additional fee to be paid to any MLS member who finds a buyer for the property). Home sellers who elect to work with these brokers forego important services provided by full-service brokers, but can save thousands of dollars.

Other brokers outside Columbia deliver some brokerage services over the Internet, reducing their costs by automating some time-intensive tasks and passing cost savings onto consumers in the form of lower commissions. The ease of sharing information over the Internet has also allowed some brokers to serve a larger geographic area than they were able to when face-to-face communication was expected. Some brokers from other parts of South Carolina and neighboring states have expressed interest in competing with existing Columbia-area brokers and offering brokerage services to buyers and sellers in Columbia.

C. Description of the Alleged Violation

CMLS unreasonably restrained competition by impeding the competitive process through its adoption and enforcement of rules that banned innovative forms of competition and raised barriers to entry for new competitors. These rules, which were agreed to by CMLS's member brokers, injured consumers by limiting the variety of services available from Columbia-area brokers and raising the commissions that consumers must pay them. As none of these rules enhanced the efficiency or effectiveness of its MLS, CLMS's rules violate Section 1 of the Sherman Act, 15 U.S.C. 1.[1]

As alleged in the complaint, CMLS harmed competition through the following rules.

1. Freedom-of-Contract Restriction

CMLS prohibited brokers and their clients from entering into any agreement other than the single form contract dictated by CMLS. The single contract allowed by CMLS—an ''exclusive right to sell'' agreement—required the seller to pay a commission to the broker even if the seller, and not the broker, was responsible for finding a buyer for the home. In other markets, clients can negotiate an ''exclusive agency'' agreement under which the seller owes no commission to the broker if the seller finds a buyer. Exclusive agency agreements are favored by sellers who want to market their own properties, even after hiring a broker, and preserving the option of paying no commission. CMLS outlawed these agreements and any other deviations from its mandatory form contract.

2. ''Active Involvement'' Requirement

CMLS required brokers to be ''active[ly] involve[d]'' in the marketing, sale, and closing of each property. This prevented Columbia-area consumers from saving money by working with fee-for-service brokers who charged only for the specific services the consumers desired. This rule caused one Columbia-area broker who also operates in other parts of South Carolina to charge Columbia-area consumers $500 more than he charges consumers in other markets, where he is not obligated to

[1] CMLS's rules harmed competition in the provision of real estate brokerage services to buyers and sellers. The relevant geographic market in which these brokers compete is the greater Columbia area served by CMLS. As discussed above, CMLS possesses substantial market power in this market because virtually all Columbia-area brokers regard membership in CMLS and access to its MLS to be essential to their ability to compete effectively to serve Columbia-area buyers and sellers.

provide services consumers may not want.

3. Home Office Prohibition

CMLS required all new members to maintain commercial offices and prohibited them from operating out of their homes. This prevented entry into the Columbia market by many brokers who hoped to reduce their overhead by using home offices and passing on their cost savings to their clients in the form of lower fees.

4. Out-of-Area Broker Prohibition

CMLS insulated itself from competition from brokers outside of the Columbia area by requiring that all brokers maintain an office in the Columbia area. Discount brokers operating outside Columbia found they could not offer their services to Columbia-area consumers because their low-margin business models did not support opening offices within the CMLS territory.

5. Restrictive Membership Requirements

CMLS charged applicants a nonrefundable initiation fee of $5,000, greater than its costs in adding new members and substantially higher than similar entry fees charged by any other MLSs in South Carolina. CMLS, which maintains a million-dollar-surplus annually—in part based on these higher-than-necessary initiation fees—distributes a portion of its surplus each year to existing members, effectively taxing new competition to enrich incumbents. CMLS also required applicants for membership to appear for an interview with a membership committee consisting of the traditional, full-service brokers that dominated CMLS's Board, at which applicants were expected to discuss the nature of their businesses. This interview requirement deterred applications from several nontraditional, low-priced brokers who were fearful of losing their nonrefundable initiation fee if the interview committee opposed their business model and declined to approve their application. These brokers' fears were well founded, as CMLS's Board also possessed the power to deny membership to brokers who they feared would compete too aggressively.

D. Harm From the Alleged Violation

Taken together, CMLS's rules—established through the exercise of market power by CMLS's broker members—impeded competition among brokers in Columbia, denying Columbia-area consumers choices that are available outside of Columbia and increasing the fees they paid for brokerage services. The prevalence of nontraditional service offerings in markets outside Columbia makes it clear that consumers demand these offerings. The CMLS rules prohibited Columbia-area brokers from competing to satisfy that demand. One study conducted in connection with this case estimated, based on experiences in other markets, that approximately 1,500 Columbia-area home sellers were denied their preferred option—an exclusive agency listing—between 2005 and 2008.

Not surprisingly, data collected and analyzed in connection with this case also revealed that Columbia-area consumers paid more, on average, for brokerage services than consumers in other markets. Data supplied by four Columbia-area brokers that also do business elsewhere in South Carolina revealed that each broker collected more in commission fees from Columbia-area consumers than it did for the same service provided to consumers in other areas. On average, Columbia-area home sellers paid these brokers approximately $1,000 more per transaction than home sellers outside Columbia.

In sum, by disrupting the competitive process, CMLS's rules forced Columbia-area consumers to pay for less preferred and often more expensive brokerage services.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment will restore competition to the Columbia-area brokerage market by eliminating the anticompetitive CMLS rules and imposing additional restrictions to ensure that CMLS does not adopt new methods to continue to impede competition. It requires CMLS to repeal its freedom-of-contract restriction,[2] its ''active involvement'' requirement,[3] and its requirement that brokers maintain an office in the Columbia area.[4] CMLS repealed its home-office prohibition during the course of the litigation. The proposed Final Judgment prohibits it from reinstating the rule.[5]

CMLS will also no longer be able to prevent the entry of innovative brokers. Under the proposed Final Judgment, applicants for membership will no longer be forced to submit to a potentially intimidating interview with existing CMLS members,[6] and CMLS's Board will no longer possess the discretion to deny applications for admission.[7] In fact, under the proposed Final Judgment, CMLS must admit any broker who is duly licensed in South Carolina.[8] The proposed Final Judgment also prohibits CMLS from charging application or initiation fees that exceed its ''reasonably estimated cost'' in adding new members.[9] This will ensure that applicants will not face an unnecessarily high entry fee and will end the practice of incumbent members enriching themselves at the expense of potential entrants.

The proposed Final Judgment also broadly prohibits CMLS from excluding

[2] *See* proposed Final Judgment, ¶ V.B.7. Sellers who enter exclusive agency agreements with their brokers, under which they owe no commission if they find buyers for their properties, may seek to market their homes themselves and not rely on their brokers for marketing services. The proposed Final Judgment also prohibits CMLS from interfering in the marketing efforts of home sellers who enter these exclusive agency agreements. *See id.* at ¶¶ IV.A.4, V.B. 11, V.B.12 & V.B.16.

[3] *See id.,* ¶ V.B.3. The proposed Final Judgment also requires CMLS to eliminate a related rule that required that offers to purchase a property be submitted only to the seller's broker, and not directly to the seller, regardless of the seller's wishes. *See id.,* ¶ V.B.10.

[4] *See id.,* ¶ V.B.13. CMLS also unnecessarily burdened brokers from other markets who sought to compete in Columbia by requiring that its members use CMLS-supplied keyboxes (devices installed on homes for sale that store a key that CMLS members can use to access the home to show to potential buyers). This requirement necessitated two trips to Columbia: One to pick up the keybox from CMLS and install it on the seller's home and another to remove and return the keybox to CMLS. The proposed Final Judgment alleviates this burden by allowing home sellers to pick up a keybox from CMLS and by requiring CMLS to maintain a list of local brokers available to remove and return keyboxes. *See id.,* ¶ V.B.18.

[5] *See id.,* ¶¶ IV.A.1 & IV.A.2.

[6] *See id.* ¶ V.B.14. Applicants will be required to complete an introductory class in the use of CMLS's system (unless they are already familiar with the system) and an orientation with a CMLS staff member. CMLS will provide the introductory training class and orientation no less frequently than once every two weeks. *See id* ¶¶ V.B.17 & V.E.

[7] *See id.,* ¶ V.B.14. CMLS collects copies of some agreements between brokers and their seller clients to ensure that a home seller has actually selected the broker to provide brokerage services in the sale of the seller's property or that the broker has complied with CMLS's reasonable requirement that brokers promptly submit information about the property to CMLS. These agreements, however, also identify the commission fee the seller agrees to pay his or her broker. To ensure that no CMLS member broker is able to learn about competitors' pricing practices from these agreements, the proposed Final Judgment requires CMLS to prevent any CMLS member from seeing the agreements it collects and permits brokers who are selected for CLMS's audit of their agreements to substantially redact the agreement to remove any competitively sensitive information. *See id.,* ¶¶ V.B.9 & V.F.

[8] *See id.,* ¶ IV.A.1.

[9] *Id.,* ¶ IV.B. CMLS had also raised entry costs by requiring that applicants obtain at least $500,000 in errors and omissions insurance coverage. This requirement forced a number of CMLS members who were unable to obtain insurance coverage to terminate their memberships in CMLS. The proposed Final Judgment requires CMLS to repeal its insurance requirement, but allows CMLS to insist that uninsured brokers disclose their lack of insurance coverage to clients and other brokers. *Id.,* ¶ V.B.20. This disclosure requirement will ensure that sellers and other brokers are fully informed about a broker's insurance coverage and will allow the marketplace to dictate the need for such coverage.

any licensed broker (who does not possess a criminal record[10]) from membership and from discriminating against or disadvantaging any broker based on the services the broker provides his or her clients, the contractual forms the broker uses, the broker's pricing or commission rates, or the broker's office location.[11]

Finally, the proposed Final Judgment, applicable for ten years after its entry by this Court,[12] establishes an antitrust compliance program under which CMLS must furnish to the United States minutes of each meeting of CMLS's Board or its committees and copies of its rules following any rule changes.[13] After entry of the proposed Final Judgment, CMLS is also required to provide copies of the Final Judgment and of its rules, modified to conform to the Final Judgment, to each of its members and to each person CMLS knows to have inquired about membership in the past five years.[14] The proposed Final Judgment expressly places no limitation on the United States' ability to investigate or bring an antitrust enforcement action in the future to prevent harm to competition caused by any rule adopted or enforced by CMLS.[15]

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. § 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against CMLS.

V. Procedures Available for Modification of the Proposed Final Judgment

The United States and CMLS have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: John R. Read, Chief, Litigation III Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 4000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.[16]

VI. Alternatives to the Proposed Amended Final Judgment

At several points during the litigation, the United States received from defendant CMLS proposals or suggestions that would have provided less relief than is contained in the proposed Final Judgment. These proposals and suggestions were rejected.

The United States considered, as an alternative to the proposed Final Judgment, proceeding with a full trial on the merits against CMLS. The United States is satisfied that the relief contained in the proposed Final Judgment will quickly establish, preserve, and ensure that Columbia-area consumers can benefit from unfettered competition in the Columbia market.

VII. Standard of Review Under the Appa for Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e)(1). In making that determination, the court, in accordance with the statute as amended in 2004, is required to consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the court's inquiry is necessarily a limited one as the United States is entitled to ''broad discretion to settle with the defendant within the reaches of the public interest.'' *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (D.C. Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act).[17]

As the United States Court of Appeals for the District of Columbia Circuit has held, under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001). Courts have held that:

[10] *See id.,* ¶¶ VI.A.

[11] *Id.,* ¶¶ IV.A.1 & IV.A.2.

[12] *Id.,* ¶ X.

[13] *Id.,* ¶ V.G.

[14] *Id.,* ¶ V.H.

[15] *Id.,* ¶ IX.

[16] *Id.,* ¶ VIII.

[17] The 2004 amendments substituted ''shall'' for ''may'' in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), *with* 15 U.S.C. 16(e)(1) (2006); *see also SBC Commc'ns,* 489 F. Supp. 2d at 11 (concluding that the 2004 amendments ''effected minimal changes'' to Tunney Act review).

[T]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[18] In determining whether a proposed settlement is in the public interest, a district court ''must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be ''deferential to the government's predictions as to the effect of the proposed remedies''); *United States* v. *Archer-Daniels-Midland* Co., 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

Courts have greater flexibility in approving proposed consent decrees than in crafting their own decrees following a finding of liability in a litigated matter. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.'" *United States* v. *Am. Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States ''need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms.'' *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60. As the United States District Court for the District of Columbia recently confirmed in *SBC Communications,* courts ''cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power.'' *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: ''[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the court, with the recognition that the court's ''scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings.'' *SBC Commc'ns,* 489 F. Supp. 2d at 11.[19]

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Respectfully submitted,
For Plaintiff The United States of America

s/ Jennifer J. Aldrich
William Walter Wilkins, III,
United States Attorney, District of South Carolina.

By:

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Dated: May 8, 2009

Certificate of Service

I, Jennifer J. Aldrich, certify that on this 8th day of May, 2009, I caused a copy of the *Competitive Impact Statement* to be served on the person listed below by ECF.

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Counsel for Defendant Consolidated Multiple Listing Service, Inc.

s Jennifer J. Aldrich
Jennifer J. Aldrich

United States District Court for the District of South Carolina Columbia Division

United States of America, Plaintiff, v. Consolidated Multiple Listing Service, Inc., Defendant

Case No. 3:08–CV–01786–SB

Filed: 05/04/2009

[Proposed] Final Judgment

Whereas, Plaintiff, United States of America, filed its Complaint on May 2, 2008, alleging that Defendant Consolidated Multiple Listing Service,

[18] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette* Co., 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'").

[19] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the ''Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone''); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) (''Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.''); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) (''Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.'').

Inc. (''CMLS'') adopted rules and practices that exclude competitors from and restrain competition in the Columbia, South Carolina, real estate brokerage market in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, and Plaintiff and Defendant, by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against, or any admission by, any party regarding any issue of fact or law;

Whereas, the United States requires CMLS to agree to certain procedures and prohibitions for the purposes of preventing and remedying the loss of competition alleged in the Complaint;

Whereas, CMLS agrees to be bound by the provisions of this Final Judgment pending its approval by the Court;

Whereas, the purpose of this Final Judgment is the prompt and certain elimination of barriers to new and innovative broker competitors and impediments to competition among brokers in the Columbia area;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *ordered, adjudged, and decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against CMLS under Section 1 of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. ''Board'' means CMLS's Board of Directors or Board of Trustees.

B. ''Broker-in-Charge'' means a broker-in-charge as the term is defined under Title 40, Chapter 57 of the Code of Laws of South Carolina.

C. ''CMLS'' means the Defendant, Consolidated Multiple Listing Service, Inc., its predecessors, successors, subsidiaries, affiliates, partnerships, and joint ventures and all directors, trustees, officers, employees, agents and representatives of the foregoing. The terms ''subsidiary,'' ''affiliate,'' and ''joint venture'' refer to any Person in which there is or has been partial (twenty percent or more) or total ownership or control between CMLS and any other Person.

D. ''Department of Justice'' means the United States Department of Justice, Antitrust Division.

E. ''Including'' means including, but not limited to.

F. ''Licensee'' means a Person licensed as a broker or salesman under Title 40, Chapter 57 of the Code of Laws of South Carolina and affiliated with a Member of CMLS.

G. ''Member'' means an Owner who is entitled to receipt of or access to all products and services that CMLS offers to any member or participant.

H. ''Membership'' means being a Member of CMLS.

I. ''Owner'' means a person who is or employs a Broker-in-Charge.

J. ''Person'' means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

K. ''Rule'' means any CMLS rule, bylaw, policy, standard, or guideline.

L. The terms ''and'' and ''or'' have both conjunctive and disjunctive meanings.

III. Applicability

This Final Judgment applies to CMLS and all other persons in active concert or participation with it who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

A. Subject to the provisions of Section VI of this Final Judgment, CMLS shall not adopt, maintain, or enforce any Rule, or enter into or enforce any agreement or practice, that directly or indirectly

1. Denies Membership in CMLS to any Owner who requests Membership in CMLS;

2. Discriminates against or disadvantages any Member or Licensee based on the Member's or Licensee's office location, pricing or commission rates, business model, contractual forms or types used, or services or activities the Member or Licensee performs or does not perform for any home buyer or home seller;

3. Conditions CMLS's acceptance of any listing or its provision of any other product or service to any Member or any Licensee on the Member's or Licensee's pricing or commission rate or performance of or agreement to perform any service or activity for any home buyer or home seller; or

4. Prohibits, restricts, or impedes any truthful advertising or marketing activities of any home seller or discriminates against or disadvantages any Member or Licensee for any truthful advertising or marketing activity in which any home seller is engaged. For purposes of this provision, it is not untruthful for a home seller who has entered an exclusive agency listing agreement with a Member or Licensee to advertise his or her home in ''For Sale by Owner'' or ''FSBO'' publications or on ''For Sale by Owner'' or ''FSBO'' Web sites or to otherwise suggest to the public that the home seller is selling his or her own home.

B. CMLS shall not require any Owner who seeks to become a Member to pay, as a condition of becoming a Member, initiation, application, or other fees that, individually or in the aggregate, exceed the reasonably estimated cost incurred by CMLS in adding a new Member.

C. CMLS shall not inquire into or request information about the actual or anticipated business model, prices or commission rates charged or to be charged, or operations of (i) any Owner who requests Membership in CMLS, (ii) any Member, or (iii) any Licensee, except as necessary to ensure that the Owner, Member, or Licensee holds (or employs a person who holds) the appropriate license under Title 40, Chapter 57 of the Code of Laws of South Carolina.

D. CMLS shall not re-adopt or enforce any Rules or portions of Rules that it must delete under Sections V.A or V.B of this Final Judgment or reverse or modify any modifications to Rules or portions of Rules that it must modify under Section V.B of this Final Judgment.

V. Required Conduct

A. Subject to the provisions of Section VI of this Final Judgment, CMLS shall delete and cease to enforce any Rule, and discontinue any practice, that CMLS would be prohibited from adopting, maintaining, or enforcing pursuant to Section IV of this Final Judgment.

B. CMLS shall make the following specific changes to its Rules (all references are to the December 2008 version of CMLS's Bylaws and to the January 2009 version of CMLS's rules):

1. CMLS shall modify Article III, Section 1 of its Bylaws as follows:

Current language:

Those eligible for membership in CMLS shall consist of entities and/or individuals holding a license to engage in the real estate business within the Midlands of South Carolina which are primarily in the real estate business within primary areas served by the CMLS shall qualify for membership. The service areas include the counties of Richland, Lexington, Saluda, Kershaw, Calhoun, Newberry and Fairfield.

Modified language:

Those eligible for membership in CMLS shall consist of Owners who are or who employ Brokers-in-Charge holding licenses allowing them to engage in the real estate business in South Carolina.

2. CMLS shall delete and cease to enforce the following portion of Article III, Section 6 of its Bylaws:

This application will include a thorough resume of the new Member's Broker-in-Charge and owner. The prospective member also agrees that a credit check may be required. The application must be submitted to the CMLS office no later than two weeks prior to the scheduled membership meeting.

3. CMLS shall delete and cease to enforce the following portion of Article IV of its Bylaws:

Recognizing That Professional Representation Of Both A Buyer And A Seller Is Critically Important In Any Real Estate Transaction, No Property Shall Be Listed With The CMLS Unless The Agreement Between The Seller And Listing Agent Expressly Requires Active Involvement By That Agent In The Sale And Closing Of The Property. Failure To Abide By This Precept Shall Cause A Property To Be

De-Listed And May Subject The Listing Agent To Expulsion From CMLS.

4. CMLS shall modify Article XI of its Bylaws as follows:

Current language:

Any dispute between Members relating to or arising out of breaches or violations of the rules and regulations of the CMLS, or between Members and buyers and sellers, arising out of the use of the CMLS, shall be submitted for mediation as herein provided in the Exclusive Right to Sell Contract.

Modified language:

Any dispute between Members relating to or arising out of breaches or violations of the rules and regulations of the CMLS shall be submitted for mediation.

5. CMLS shall modify a portion of Definition 8 (''Listing Agreement'') as follows:

Current language:

CMLS allows the entry of Exclusive Right to Sell and Exclusive Agency into the CMLS database, as adopted and approved by the Board from time to time.

Modified language:

CMLS allows the entry of Exclusive Right to Sell and Exclusive Agency listings into the CMLS database.

6. CMLS shall modify Definition 10 (''FSBO'') as follows:

Current language:

Properties for sale by an Owner with no CMLS Exclusive Right to Sell Form executed by Owner.

Modified language:

Properties for sale by an Owner with no Listing Agreement executed by Owner.

7. CMLS shall modify Rule 1(a) as follows:

Current language:

Written Agreement. Each listing submitted by a Member shall be in writing on the Exclusive Right to Sell (ERTS) Form or Exclusive Agency (EA) Form as approved by the Board from time to time. No alteration of any kind to the provisions of the Listing Agreement shall be allowed. No material shall be included in the 'Special Stipulations' section of the Listing Agreements which is inconsistent with or which modifies the printed portion of the Listing Agreements or which is inconsistent with the By-Laws or Rules or Regulations of CMLS. No Member or representative thereof shall make any agreement with an Owner, whether verbally or in writing, which varies, in any way, the provisions of the Listing Agreements provided herein. CMLS allows only a single list price for a property.

Modified language:

Written Agreement. For each listing submitted to CMLS by a Member, the Member shall have a written Listing Agreement with the property owner.

8. CMLS shall modify Rule 1(b)(1) as follows:

Current language:

All listings shall be prepared on such forms as the Board shall approve from time to time* * *

Modified language:

Members shall collect information about listings submitted to CMLS on Listing Input Sheets as the Board shall approve from time to time * * *

9 . CMLS shall modify Rule 1(b)(2) as follows:

Current language:

All listings must be entered into the computer within 2 business days upon acceptance of the listing by the Member. If not entered by the Member, the listing shall be delivered to CMLS within 2 business days by hand delivery or facsimile transfer and a fee of $15.00 will be required for entry by CMLS. Completed Listing Forms (to include Listing Input Sheets and Exclusive Right to Sell or Exclusive Agency Contracts) are not required to be submitted to CMLS, but will be retained by member companies in accordance with current State Law. Copies of these documents shall be submitted to CMLS upon request. Additionally, ten (10) percent of new listings entered into the CMLS database will be automatically selected for audit. The Listing Company will be notified at the time the listing is entered into the system and an MLS number assigned. A follow-up e-mail will be transmitted to the Listing Agent, the person entering the listing and the BIC.

Modified language:

All listings must be entered into the computer within two (2) business days upon acceptance of the listing by the Member. If not entered by the Member, the Listing Input Sheet shall be delivered to CMLS within two (2) business days by hand delivery or facsimile transfer and a fee of $15 will be required for entry by CMLS. Completed Listing Agreements should be retained by member companies in accordance with current State Law. Copies of Listing Input Sheets (but not Listing Agreements) shall be submitted to CMLS upon request. However, no more than ten (10) percent of new listings entered into the CMLS database will be randomly selected for audit. The Listing Company will be notified at the time the listing is entered into the system and an MLS number assigned. A follow-up e-mail will be transmitted to the Listing Agent, the person entering the listing and the BIC. If selected for audit, the Listing Company shall submit copies of Listing Input Sheets and Listing Agreements to CMLS within two business days. Before submitting any Listing Agreement, the Listing Company may white out, black out, or otherwise conceal all information in the Listing Agreement except the Member's or Listing Agent's and owner's signatures, the co-broke fee to be paid to any Selling Company, the date of execution of the Listing Agreement, the term (length) of the Listing Agreement, and the address of the listed property. Listings submitted for audit may be reviewed by any CMLS employee other than those employees who are also CMLS Members. CMLS will destroy any audited Listing Input Sheets and Listing Agreements within five business days of receiving them or following the resolution of any issues.

10. CMLS shall modify a portion of Rule 2 as follows:

Current language:

Offers on properties included in the CMLS shall be made in written form to the Selling Company and not directly to the Owner.

Modified language:

Offers on properties included in the CMLS shall be made in written form to the Listing Company and not directly to the Owner, unless the Listing Company communicates otherwise in the broker or agent remarks field in the listing. The Listing Company shall, upon request, furnish an executed copy of a form dated and signed by the Owner stating as follows: 'I have entered a listing agreement with [broker] for the sale of my property. I have agreed with my broker that offers from potential buyers (or their brokers or agents) will be submitted to me and not to my broker'

11. CMLS shall modify a portion of Rule 3 as follows:

Current language:

There will be no owner's names or phone numbers on any signage.

Modified language:

There will be no owner's names or phone numbers on any signage, unless the Listing Company and Owner have entered an Exclusive Agency Listing as opposed to an Exclusive Right to Sell Listing.

12. CMLS shall modify a portion of Rule 3 as follows:

Current language:

No 'For Sale By Owner' (FSBO) sign may be placed on the property nor may the property be advertised in print media as a FSBO or electronically on FSBO sites.

Modified language:

No 'For Sale By Owner' (FSBO) sign may be placed on the property nor may the property be advertised in print media as a FSBO or electronically on FSBO sites, unless the Listing Company and Owner have entered an Exclusive Agency Listing as opposed to an Exclusive Right to Sell Listing.

13. CMLS shall modify a portion of Rule 5(b) as follows::

Current language:

In order to maintain the highest professional standards and meet the requirements of Article II Item 3, all Members must maintain an office in accordance with State Law. The office shall be maintained within primary areas served by CMLS, which includes the counties of Richland, Lexington, Kershaw, Saluda, Newberry, Calhoun and Fairfield.

Modified language:

In order to maintain the highest professional standards and meet the requirements of Article II Item 3, all Members

must maintain an office in accordance with State Law, enforcement of which is the responsibility of the appropriate State officials.

14. CMLS shall delete and cease to enforce Rule 5(c), which states as follows:

A representative (Owner/Broker-in-Charge) of the prospective Member must personally appear at the CMLS office for a brief orientation meeting with the Membership Committee. The CMLS Board will vote on acceptance of the prospective new Member at the next scheduled board meeting. This voting process may also be conducted via e-mail. The prospective Member will be notified of the Board's decision within 2 business days.

15. CMLS shall modify a portion of Rule 7 as follows:

Current language:

* * * no Member may advertise in any media that they can list a property in the CMLS for a flat fee without disclosing to the consumer that the consumer will be required to sign an Exclusive Right to Sell contract which includes the co-broke fee the consumer is willing to pay.

Modified language:

* * * no Member may advertise in any media that they can list a property in the CMLS for a flat fee without disclosing to the consumer that the consumer will be required to offer a co-broke fee.

16. CMLS shall modify a portion of Rule 7 as follows:

Current language:

No property may be advertised in print media as a FSBO or electronically on FSBO sites nor can a FSBO sign be placed on the property.

Modified language:

No property may be advertised in print media as a FSBO or electronically on FSBO sites nor can a FSBO sign be placed on the property, unless the Listing Company and Owner have entered an Exclusive Agency Listing as opposed to an Exclusive Right to Sell Listing.

17. CMLS shall modify Rule 17 as follows:

Current language:

Prior to being granted access to the CMLS system for the purpose of information entry an agent/representative or individual Member must attend and complete an introductory class on the use thereof and provide evidence thereof to the CMLS staff.

Modified language:

Prior to being granted access to the CMLS system for the purpose of information entry, an agent/representative or individual Members must attend and complete an introductory class on the use of the CMLS system and an orientation with a CMLS staff member (who is not a CMLS Member). New Members who previously worked as an agent/representative under another CMLS Member and had training in and access to the CMLS system need not repeat the introductory class and orientation. The agent/representative or individual Member will also be excused from the introductory class if he or she demonstrates familiarity with the MLS software used by CMLS, through membership in another MLS that uses the same software. In such case, the agent/representative or individual Member may receive the orientation by phone. CMLS shall provide introductory classes/orientation no less frequently than once every two weeks, if needed.

18. CMLS shall modify Rule 20(21) as follows:

Current language:

All keyboxes must be approved by the CMLS. Within the primary service area of CMLS, another type of keybox may be placed on the listing but must be accompanied by a keybox approved by the CMLS (including HUD homes, Corporate Owned homes, Foreclosures, etc). Subleasing of CMLS keyboxes is strictly forbidden and will result in a fine of $500 for each offense. Listings in violation of this rule will be removed from the CMLS system without notice.

Modified language:

Listings with keyboxes in the CMLS primary service area (Richland, Lexington, Kershaw, Saluda, Fairfield, Newberry and Calhoun Counties) must have a CMLS approved keybox. Another type of keybox (non-CMLS approved) may be placed on the listing but must be accompanied by a keybox approved by CMLS (including HUD homes, Corporate Owned homes, Foreclosures, etc.). Upon receipt of a signed agreement between the Seller and an agent/representative or individual Member requesting CMLS to supply a keybox directly to the Seller, CMLS will furnish the Seller a keybox. The agreement shall include a statement that the agent/representative or individual Member agrees to pay all normal fees associated with the issuance of a keybox. CMLS shall maintain a list of keyholders available to remove keyboxes as a service to listing brokers at a fee to be negotiated between the keyholder and Member. Subleasing of CMLS keyboxes is strictly forbidden and will result in a fine of $500 for each offense. Listings in violation of this rule will be removed from the CMLS system without notice.

19. CMLS shall modify Rule 20(23) as follows:

Current language:

Any agreement between a listor client and a Member that gives the Member an advantage over another Member must be disclosed on the CMLS listing input sheet and appear on the computer printout sheet, i.e., if the listing company or owner sells the property the commission will be modified. The listing member must disclose the details of such agreement when requested by another Member.

Modified language:

If a Member enters a Listing Agreement with an Owner under which the commission rate varies for any reason, that fact (but not the commission rate) shall be disclosed on the CMLS Listing Input Sheet and appear on the computer printout sheet.

20. CMLS shall modify Rule 21 as follows:

Current language:

Each member shall provide evidence to the Board annually that it maintains Errors and Omissions insurance in an amount of $500,000.00 or greater. Failure to maintain such insurance shall result in loss of membership if not corrected within 90 days after notice.

Modified language:

If a Member does not have or maintain at least $500,000 in Errors and Omissions insurance, it shall disclose that fact on each document required to be executed in the course of creating a listing. The Member shall also disclose that fact on the Listing Input Sheet and CMLS will include the following statement on any publication of that listing: 'The Listing Company for this property does not maintain Errors and Omissions insurance.

C. CMLS shall deliver, to any Person who requests it and by whatever reasonable delivery method such Person requests (including e-mail), a complete set of materials necessary to apply for Membership, including a complete set of CMLS's then-current Rules.

D. CMLS shall permit any Owner to submit an application for Membership by whatever reasonable delivery method he or she desires.

E. Within three business days of completion of orientation and CMLS system training, if needed, CMLS shall grant the Owner Membership in CMLS. If the applicant (Member, if orientation has been completed) has previously been trained in the use of CMLS's systems (by CMLS or another MLS), CMLS shall immediately provide the applicant all passwords and other information and materials necessary for him or her to submit listings to CMLS, to access CMLS's database of listings (including confidential or broker-to-broker information fields), and to use any product or service provided by CMLS. If the new applicant has not previously been trained in the use of CMLS's systems, CMLS shall provide such information and materials after the new applicant has completed training in the use of CMLS's systems. CMLS shall offer training in the use of its systems no less frequently than once every two weeks, if needed.

F. CMLS shall prevent any employee, officer, director, or trustee of CMLS who is himself or herself a Member or Licensee from viewing or accessing listing or other agreements between a Member or Licensee and any home buyer or home seller. Membership applications shall not request any

information concerning the business model or operations of or the commissions or other prices to be charged by the applicant.

G. CMLS shall furnish to the Department of Justice

1. A complete set of CMLS's Rules, within five business days of each modification to those Rules; and

2. A complete set of minutes of any meeting of CMLS Members or any regular or special meeting of CMLS's Board or of any committee comprised of members of CMLS's Board, within five business days of the approval of such minutes (if such minutes are formally approved) or of the finalization of such minutes (if such minutes are not formally approved).

H. Within five business days after entry of this Final Judgment, CMLS shall

1. Furnish to each Member and Licensee a hard or electronic copy of this Final Judgment and a hard or electronic copy of CMLS's Rules modified to conform to the provisions of this Final Judgment; and

2. Furnish a copy of this Final Judgment and a copy of CMLS's Rules modified to conform to the provisions of this Final Judgment to each Person who, in the five years preceding entry of this Final Judgment, CMLS knows to have picked up an application for Membership or who otherwise inquired about becoming a Member. CMLS shall also notify each such Person that CMLS will allow any Owner, who is not prohibited from Membership (under Rules permitted under Section VI of this Final Judgment), to become a Member.

VI. Permitted Conduct

Subject to Section IX of this Final Judgment and notwithstanding any of the above provisions, nothing in this Final Judgment shall prohibit CMLS from:

A. Denying Membership to or terminating the Membership of any Owner who no longer holds, or no longer employs a Broker-in-Charge who holds, a broker's license under Title 40, Chapter 57 of the Code of Laws of South Carolina or who has been convicted of a crime of either a criminal sexual nature or relating to the improper handling of funds;

B. Requiring, as a condition of obtaining or maintaining Membership, that CMLS Members certify that each Licensee affiliated with the Member has undergone a nationwide background check and has no convictions of either a criminal sexual nature or relating to the improper handling of funds; and disciplining, including terminating the Membership or access to CMLS of, any Member or Licensee who violates CMLS Rules or fails to pay CMLS's fees or dues, provided (i) that CMLS not discriminate in its investigation or discipline of Members or Licensees for Rules violations or failure to pay fees or dues based on the Members' or Licensees' office locations, pricing or commission rates, business models, contractual forms or types used, or the services or activities they perform or do not perform for any home buyer or home seller and (ii) that it maintain processes consistent with the requirements of § 33–31–621(b)(2) of the Code of Laws of South Carolina.

VII. Compliance and Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time duly authorized representatives of the Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to CMLS, be permitted:

1. Access during CMLS's office hours to inspect and copy, or at the United States's option, to require CMLS to provide hard or electronic copies of, all books, ledgers, accounts, records, data and documents in CMLS's possession, custody, or control, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, CMLS's Members, directors, trustees, officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by CMLS.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, CMLS shall submit written reports or interrogatory responses, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If, at the time information or documents are furnished by CMLS to the United States, CMLS represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and CMLS marks each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure,'' then the United States shall give CMLS ten calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. No Limitation on Government Rights

Nothing in this Final Judgment shall limit the right of the United States to investigate and bring actions to prevent or restrain violations of the antitrust laws concerning any Rule or practice adopted or enforced by CMLS.

X. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire ten years from the date of its entry.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this Final Judgment is in the public interest.

Date: _____

Court approval subject to procedures set forth in the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

Sol Blatt, Jr.,
United States District Judge.

[FR Doc. E9–11392 Filed 5–14–09; 8:45 am]

BILLING CODE P

MERIT SYSTEMS PROTECTION BOARD

Membership of the Merit Systems Protection Board's Senior Executive Service; Performance Review Board

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

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

DATES: May 15, 2009.

FOR FURTHER INFORMATION CONTACT: Marion Hines, Human Resources Director, Office of Financial and Administrative Management, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419.

SUPPLEMENTARY INFORMATION: The Merit Systems Protection Board is publishing the names of the new and current members of the Performance Review Board (PRB) as required by 5 U.S.C. 4314(c)(4). An-Ming ''Tommy'' Hwang, formerly a member of the PRB, will serve as Chair of the PRB. William L. Boulden and William D. Spencer will serve as new members. Gail T. Lovelace, formerly a member of the PRB, will serve as an advisory member.

Dated: May 11, 2009.

William D. Spencer,

Clerk of the Board.

[FR Doc. E9–11323 Filed 5–14–09; 8:45 am]

BILLING CODE 7400–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–040]

Notice of Establishment of a NASA Advisory Committee, Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App.

AGENCY: National Aeronautics and Space Administration.

Explanation of Need: The Administrator of the National Aeronautics and Space Administration has determined that the establishment of a Review of U.S. Human Space Flight Plans Committee is necessary and in the public interest in connection with duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Review of U.S. Human Space Flight Plans Committee.

Purpose and Objective: The Committee shall conduct an independent review of ongoing U.S. human space flight plans and programs, as well as alternatives, to ensure that the nation is pursuing the best trajectory for the future of human space flight—one that is safe, innovative, affordable, and sustainable. The Committee should aim to identify and characterize a range of options that spans the reasonable possibilities for continuation of U.S. human space flight activities beyond retirement of the Space Shuttle. The identification and characterization of these options should address the following objectives: (a) Expediting a new U.S. capability to support utilization of the International Space Station (ISS); (b) supporting missions to the Moon and other destinations beyond low Earth orbit (LEO); (c) stimulating commercial space flight capability; and (d) fitting within the current budget profile for NASA exploration activities.

In addition to the objectives described above, the review should examine the appropriate amount of R&D and complementary robotic activities needed to make human space flight activities most productive and affordable over the long term, as well as appropriate opportunities for international collaboration. It should also evaluate what capabilities would be enabled by each of the potential architectures considered. It should evaluate options for extending International Space Station operations beyond 2016. The Committee shall conduct meetings as appropriate at various locations throughout the United States. The Committee will provide advice only and will comply fully with the provisions of the Federal Advisory Committee Act (FACA).

Lack of Duplication of Resources: The Committee's functions cannot be performed by the Agency, another existing committee, or other means such as a public meeting.

Fairly Balanced Membership: The Committee will consist of independent experts from academia, industry, nonprofit organizations as well as private citizens. Total membership will reflect a fairly balanced view. In addition, subcommittees, task forces and/or work groups may be established by NASA to conduct studies and/or fact-finding requiring an effort of limited duration. Such subcommittees, task forces and work groups will report their findings and recommendations directly to the Committee.

Duration: The Committee will exist for 180 days, unless earlier renewed.

Responsible NASA Official: Mr. Philip McAlister, Office of Program Analysis and Evaluation, NASA Headquarters, 300 E Street, SW., Washington, DC 20546, (202) 358–0712.

Dated: May 12, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–11412 Filed 5–14–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials: Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of additional materials.

SUMMARY: This notice announces the opening of additional Nixon Presidential Historical Materials by the Richard Nixon Presidential Library and Museum, a division of the National Archives and Records Administration. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (PRMPA, 44 U.S.C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), the Agency has identified, inventoried, and prepared for public access approximately 154 hours of Nixon White House tape recordings and textual materials among the Nixon Presidential Historical Materials.

DATES: The Richard Nixon Presidential Library and Museum intends to make the materials described in this notice available to the public on Tuesday, June 23, 2009. The tape recordings will be made available on the Web at *http://www.nixonlibrary.gov* beginning at 9 a.m. (EDT)/6 a.m. (PDT). The textual materials will be made available at the National Archives building at College Park, MD beginning at 11 a.m. (EDT) with the exception of the White House Central Files of Kenneth Cole which will be made available at the Richard Nixon Library and Museum's primary location in Yorba Linda, CA beginning at 9 a.m. (PDT). In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before June 15, 2009.

ADDRESSES: The Richard Nixon Presidential Library and Museum, a division of the National Archives, has facilities in the Archives II Building at 8601 Adelphi Road, College Park, Maryland besides its primary location at 18001 Yorba Linda Blvd., Yorba Linda,

California. Listening stations for the tape recordings will be available at both locations. Researchers at either facility must have a NARA researcher card which they may obtain when they arrive at the facility. Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Timothy Naftali, Director, Richard Nixon Presidential Library and Museum, 714–983–9121 or 301–837–3117.

SUPPLEMENTARY INFORMATION: The following materials will be made available in accordance with this notice:

1. NARA is proposing to open approximately 994 conversations which were recorded at the Nixon White House in January and February 1973. These conversations total approximately 154 hours of listening time. This is the thirteenth opening of Nixon White House tapes since 1980. There are no transcripts for these tapes. Tape subject logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each conversation. Each tape log entry includes the names of participants; date and inclusive times of each conversation; location of the conversation; and an outline of the content of the conversation. Listening stations will be available on a first come, first served basis and will also be available on the Web at *http://www.nixonlibrary.gov*. NARA reserves the right to limit listening time in response to heavy demand.

2. *Previously restricted materials.* Volume: 10.5 cubic feet. A number of textual materials which were previously withheld from public access have been reviewed for release and/or declassified under the mandatory review provisions of Executive Order 12958, as amended, or in accordance with 36 CFR 1275.56 (Public Access regulations). The materials are from integral file segments for the White House Special Files, Staff Member and Office Files; the National Security Council Files; and the Henry A. Kissinger Office Files.

3. *White House Central Files, Staff Member and Office Files.* Volume: 8 cubic feet. The White House Central Files Unit was a permanent organization within the White House complex that maintained a central filing and retrieval system for the records of the President and his staff. The Staff Member and Office Files consist of materials that were transferred to the Central Files but were not incorporated into the Subject Files. The following file groups will be made available: Kenneth Cole Files.

4. *White House Central Files, Name Files:* Volume: <1 cubic foot. The Name Files were used for routine materials filed alphabetically by the name of the correspondent; copies of documents in the Name Files were usually filed by subject in the Subject Files. The Name Files relating to Paul Olsen and Frank Borman will be made available with this opening.

5. *White House Central Files, Subject Files.* Volume: 3 cubic feet. The White House Central Files Unit was a permanent organization within the White House complex that maintained a central filing and retrieval system for the records of the President and his staff. The Subject Files were arranged according to subject matter and were based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral files segments from the White House Central Files, Subject Files in this opening:

GI Gifts [partial].

ME Messages [partial].

FG 170 National Commission on Fire Prevention and Control.

FG 210 Public Advisory Committee on Trade Policy [empty].

FG 211 Public Land Law Review Commission.

FG 212 Quetico-Superior Committee.

FG 213 Railroad Retirement Board.

FG 214 Renegotiation Board.

FG 215 Securities and Exchange Commission.

FG 219 Southern Interstate Nuclear Board.

FG 220 Subversive Activities Control Board.

6. *White House Special Files, Subject Files, Oversize Attachment Files.* Volume: 7 cubic feet. The White House Special Files Unit was created within the White House complex to provide a secure storage location for administratively and politically sensitive material, personal material, and material with the President's handwriting. The Subject Files were arranged according to subject matter and were based on an alphanumerical file scheme of 61 primary categories. The Oversize Attachment Files were a means of filing and organizing materials that were too bulky or odd-sized to be placed in a file folder. Listed below are the oversize attachments from the White House Special Files, Subject Files in this opening:

CF OA 1056 FG 6–11–1 Huebner, Lee.

CF OA 354 FG 215 Securities and Exchange Commission.

7. *White House Central Files, Oversize Attachment Files.* Volume: 1 cubic foot. The White House Central Files Unit was a permanent organization within the White House complex that maintained a central filing and retrieval system for the records of the President and his staff. The Oversize Attachment Files were a means of filing and organizing materials that were too bulky or odd-sized to be placed in a file folder. Listed below are the oversize attachments from the White House Central Files, Oversize Attachment Files in this opening:

OA's (707, 1963, 3269, 3989, 3993, 4580, 4801, 4942, 5118, 5197, 5403, 5717, 8084, 8880, 8974, 9007, 9177, 9194, 9908, 10005, 10111, 10156, 10508, 10589, 10743, 10990, 11604, 11910, 12141, 12319, 13958, 14378 14484).

8. *National Security Council Files.* Volume: 3 cubic feet. In accordance with the provisions of Executive Order 12958, as amended, several series within the National Security Council files have been systematically reviewed for declassification and the following file groups will be made available:

EC–121 Korea, Shoot Down.

9. The Nixon Library holds three subgroups of Federal Record Group 87: Records of the United States Secret Service. Those relating to the ''Installation and Maintenance of the White House Sound Recording System and Tapes,'' NC3–87–82–1, consisting of 2.5 cubic feet, will be made available.

Dated: May 8, 2009.

Adrienne Thomas,

Acting Archivist of the United States.

[FR Doc. E9–11515 Filed 5–14–09; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–528, 50–529, and 50–530; NRC–2009–0012]

Notice of Acceptance for Docketing of the Application and Notice of Opportunity for Hearing Regarding Renewal of Facility Operating License Nos. NPF–41, NPF–51, and NPF–74 for an Additional 20-Year Period; Arizona Public Service Company; Palo Verde Nuclear Generating Station, Units 1, 2, and 3

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of operating licenses NPF–41, NPF–51, and NPF–74, which authorize Arizona Public Service Company (APS), to operate the Palo Verde Nuclear Generating Station (PVNGS), Units 1, 2, and 3, at 3,990 megawatts thermal. The

renewed license would authorize the applicant to operate the PVNGS for an additional 20 years beyond the period specified in the current license. PVNGS is located in Maricopa County, AZ, near Phoenix and its current operating licenses expire at midnight June 1, 2025, April 24, 2026, and November 25, 2027, respectively.

APS submitted the application dated December 11, 2008, pursuant to Title 10 of the *Code of Federal Regulations* (10 CFR), Parts 50, 51, and 54, to renew operating licenses NPF–41, NPF–51, and NPF–74 for PVNGS. A notice of receipt and availability of the license renewal application (LRA) was published in the **Federal Register** on January 21, 2009 (74 FR 3655).

Supplemental information to the application was submitted by APS by letter dated April 14, 2009. The Commission's staff has determined that APS has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, 51.45, and 51.53(c) to enable the staff to undertake a review of the application, and the application is therefore acceptable for docketing. The current Docket Nos. 50–528, 50–529, and 50–530, for operating licenses NPF–41, NPF–51, and NPF–74, will be retained. The determination to accept the LRA for docketing does not constitute a determination that a renewed license should be issued and does not preclude the NRC staff from requesting additional information as the review proceeds.

Before issuance of the requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954 (the Act), as amended, and the Commission's rules and regulations. In accordance with 10 CFR 54.29, ''Standards for Issuance of a Renewed License,'' the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to (1) managing, during the period of extended operation, the effects of aging on the functionality of structures and components that have been identified as requiring aging management review and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis and that any changes made to the plant's current licensing basis will comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants,'' issued May 1996. In considering the LRA, the Commission must find that the applicable requirements of Subpart A of 10 CFR Part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' have been satisfied, and that matters raised under 10 CFR 2.335, ''Consideration of Commission Rules and Regulations in Adjudicatory Proceedings,'' have been addressed. Pursuant to 10 CFR 51.26, ''Requirement to Publish Notice of Intent and Conduct Scoping Process,'' and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding the environmental scoping meeting will be the subject of a separate **Federal Register** notice.

Within 60 days after the date of publication of this **Federal Register** notice, any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing or petitions for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions,'' which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852 and is accessible from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to the Internet or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *PDR.Resource@nrc.gov.* If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will issue a notice of a hearing or an appropriate order. If no request for a hearing or petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR part 51 and 10 CFR part 54, ''Requirements for Renewal of Operating Licenses for Nuclear Power Plants,'' renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition shall specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition shall also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention shall consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner must briefly explain the bases of each contention and state concisely the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinions. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention shall be one that, if proven, would

[1] If the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alphabetic designation within one of the following groups: (1) Technical (primarily related to safety concerns), (2) environmental, or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who will have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for hearing or a petition for leave to intervene shall be filed in accordance with the NRC E-Filing rule, which the NRC officially announced in the **Federal Register** on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the petitioner/requestor should contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating and/or (2) the creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing shall be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing Help Desk, which is available between 8 a.m. and 8 p.m. Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing Help Desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings shall be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the Presiding Officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings shall be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Detailed information about the license renewal process can be found under the Nuclear Reactors icon at *http://www.nrc.gov/reactors/operating/licensing/renewal.html* on the NRC's Web site. Copies of the application to renew the operating license for PVNGS, Units 1, 2, and 3, are available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, MD 20852–2738, and at the NRC's Web site, *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html*, while the application is under review. The application may be accessed in ADAMS through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Nos. ML083510627 and

ML091130221 (for the April supplement). As stated above, persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS may contact the NRC PDR reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *PDR.Resource@nrc.gov*.

The NRC staff has verified that a copy of the LRA is also available to local residents near PVNGS at the Litchfield Park Branch Library, 101 West Wigwam Boulevard, Litchfield Park, AZ 85340, and the Sam Garcia Western Avenue Library, 495 East Western Avenue, Avondale, AZ 85323.

Attorney for Arizona Public Service Company: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, AZ 85072–2034.

Dated at Rockville, Maryland, this 11th day of May 2009.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. E9–11388 Filed 5–14–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–391; NRC–2008–0369]

Tennessee Valley Authority: Notice of Receipt of Update to Application for Facility Operating License and Notice of Opportunity for Hearing for the Watts Bar Nuclear Plant, Unit 2 and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information and Safeguards Information for Contention Preparation

In accordance with the Commission's direction in its Staff Requirements Memorandum SECY–07–0096, ''Staff Requirements—Possible Reactivation of Construction and Licensing Activities for the Watts Bar Nuclear Plant Unit 2,'' dated July 25, 2007, and pursuant to the Atomic Energy Act of 1954 (the Act), as amended, and the regulations in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 2, ''Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders,'' and 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' notice is hereby given that, on March 4, 2009, the U.S. Nuclear Regulatory Commission (NRC, the Commission) has received an update to the application for a facility operating license (OL) from the Tennessee Valley Authority (TVA or the applicant) that would authorize TVA to possess, use, and operate a second light-water nuclear reactor (the facility), Watts Bar Nuclear Plant (WBN) Unit 2, located on the applicant's site in Rhea County, Tennessee. The unit would operate at a steady-state power level of 3411 megawatts thermal. The original application dated June 30, 1976, was found acceptable for docketing on September 15, 1976, and ''Notice of Receipt of Application for Facility Operating Licenses; Notice of Consideration of Issuance of Facility Operating Licenses; and Notice of Opportunity for Hearing'' for WBN Units 1 and 2 was published in the **Federal Register** on December 27, 1976 (41 FR 56244). On February 7, 1996, the NRC issued a full-power OL to TVA to operate WBN Unit 1 at this site. However, TVA has not completed construction of WBN Unit 2. Construction of the facility was authorized by Construction Permit No. CPPR–92, issued by the Commission on January 23, 1973. TVA has stated that it expects to complete construction prior to April 1, 2012.

Pursuant to the National Environmental Policy Act, as amended, and the Commission's regulations in 10 CFR part 51, on February 15, 2008, TVA submitted to the NRC ''Watts Bar Nuclear Plant (WBN)—Unit 2—Final Supplemental Environmental Impact Statement [FSEIS] for the Completion and Operation of Unit 2,'' to the NRC in support of its OL application for WBN Unit 2. By letter dated January 27, 2009, TVA submitted its ''Final Supplemental Environmental Impact Statement—Severe Accident Management Alternatives [SAMA],'' to supplement its FSEIS. After the staff has completed its review of TVA's FSEIS, the NRC will prepare a draft supplement to environmental impact statement related to the operation of WBN Unit 2 (SEIS–OL). Upon preparation of the draft SEIS–OL, the Commission will, among other things, cause to be published in the **Federal Register,** a notice of availability of the draft supplement, requesting comments from interested persons on the draft SEIS–OL. The notice will also contain a statement to the effect that any comments of Federal agencies and State and local officials will be made available when received. The draft SEIS–OL will focus on matters that differ from those previously discussed in the final environmental statement prepared in connection with the issuance of the construction permits and the WBN Unit 1 OL. Upon consideration of comments submitted with respect to the draft SEIS–OL, the Commission's staff will prepare a final SEIS–OL, the availability of which will be published in the **Federal Register.**

The NRC staff will complete a detailed technical review of the application and will document its findings in Supplements to NUREG–0847, ''Safety Evaluation Report Related to the Operation of Watts Bar Nuclear Plant, Unit 2.''

The Commission will consider the issuance of the facility OL to TVA, which would authorize the applicant to possess, use and operate the WBN Unit 2 in accordance with the provisions of the license and the technical specifications appended thereto, upon: (1) The completion of a favorable safety evaluation of the application by the Commission's staff; (2) the completion of the environmental review required by the Commission's regulations in 10 CFR part 51; (3) the receipt of a report on the applicant's application for the facility OL by the Advisory Committee on Reactor Safeguards; and (4) a finding by the Commission that the application for the facility licenses, as amended, complies with the requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I.

The OL will not be issued until the Commission has made the findings reflecting its review of the application under the Act, which will be set forth in the proposed license, and has concluded that the issuance of the license will not be inimical to the common defense and security or to the health and safety of the public.

Within 60 days after the date of initial publication of this notice in the **Federal Register** on May 1, 2009 (74 FR 20350), any person(s) whose interest may be affected by this action and who desires to participate as a party to this action may file a written request for a hearing and a petition to intervene with respect to whether an OL should be issued. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, ''Hearing Requests, Petitions To Intervene, Requirements for Standing, and Contentions,'' which is available at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O–1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic

Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* Although the notice of the application will be published once each week for 4 consecutive weeks in the **Federal Register,** the 60-day period will only begin upon the date of the first publication of the notice.

If a request for a hearing or petition for leave to intervene is filed within 60 days of the date of the initial notice, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene or request for hearing shall set forth with particularity the interest of the petitioner/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the licensing action under consideration. The scope of the hearing and intervention request is limited to TVA's application for an OL. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene shall become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements associated with E-Filing, at least 10 days prior to the filing deadline, the requestor should contact the Office of the Secretary by e-mail at *hearing.docket@nrc.gov* or by calling (301) 415–1677, to request (1) a digital identification (ID) certificate that allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any NRC proceeding in which it is participating or (2) the creation of an electronic docket for the proceeding (even in instances when the requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE) viewer, which is a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about how to apply for a digital ID certificate is also available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, he or she can then submit a request for a hearing through EIE. Submissions should be in portable document format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits the document through EIE. To be timely, electronic filings must be submitted to the EIE system no later than 11:59 p.m. eastern time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request is filed so that they may obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory e-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC Electronic Filing Help Desk, which is available between 8 a.m. and 8 p.m., eastern time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC Electronic Filing Help Desk at *MSHD.resource@nrc.gov.*

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted (1) by first-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or (2) by courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking

and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of the deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. eastern time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless they are excluded under an order of the Commission, the Atomic Safety and Licensing Board, or a presiding officer. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or home telephone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a ''fair use'' application, participants are requested not to include copyrighted materials in their submission.

For further details pertinent to the matters under consideration, see the application for the facility OL dated June 30, 1975, as supplemented on September 27, 1976, and as updated on March 4, 2009, which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically through the ADAMS Public Electronic Reading Room link on the internet at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Certain documents included in the OL application contain sensitive unclassified non-safeguards information and safeguards information. Persons who do not have access to ADAMS or who encounter problems in accessing documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–4209, 301–415–4737, or by e-mail to *pdr.resources@nrc.gov.* The OL application and its supplement and update are available at *http://www.nrc.gov/reactors/plant-specific-items/watts-bar.html.* The ADAMS accession numbers for the OL application cover letter and supplement cover letter are ML073400595 and ML073381112, respectively. The ADAMS accession number for the update to the application is ML090700378. The ADAMS accession number for Supplement 21 to NUREG–0847 is ML090570741. The ADAMS accession number for the final safety analysis report, as redacted under 10 CFR 2.390(d)(1), is ML090980525. The redactions were made in compliance with the NRC's criteria on sensitive information, as specified in SECY–04–0191, ''Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure,'' dated October 19, 2004 (ADAMS accession number ML042310663), as modified by the NRC Commission Staff Requirements Memorandum SECY–04–0191, dated November 9, 2004 (ADAMS accession number ML043140175). To search for other related documents in ADAMS using the Watts Bar Nuclear Plant Unit 2 OL application docket number, 50–391, enter the term ''05000391'' in the ''Docket Number'' field when using either the Web-based search (advanced search) engine or the ADAMS find tool in Citrix.

Attorney for the applicant: Maureen H. Dunn, Executive Vice President and General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, TN 37902.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) and Safeguards Information (SGI) for Contention Preparation, Tennessee Valley Authority Watts Bar Nuclear Plant, Unit 2, Located in Rhea County, Tennessee Docket No. 50–391

1. This order contains instructions regarding how potential parties to the proceedings listed above may request access to documents containing sensitive unclassified non-safeguards information and safeguards information (SUNSI and SGI).

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI or SGI is necessary for a response to the notice may request access to SUNSI or SGI. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI and/or SGI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail addresses for the Office of the Secretary and the Office of the General Counsel are *hearing.docket@nrc.gov* and *ogcmailcenter.resource@nrc.gov,* respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this **Federal Register** notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in (a);

c. If the request is for SUNSI, the identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

d. If the request is for SGI, the identity of the individual requesting access to SGI and the identity of any expert, consultant or assistant who will aid the requester in evaluating the SGI, and information that shows:

(i) Why the information is indispensable to meaningful participation in this licensing proceeding; and

(ii) The technical competence (demonstrable knowledge, skill, experience, training or education) of the requester to understand and use (or evaluate) the requested information to provide the basis and specificity for a proffered contention. The technical competence of a potential party or its counsel may be shown by reliance on a

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E–Filing Rule,'' the initial request to access SUNSI and/or SGI under these procedures should be submitted as described in this paragraph.

qualified expert, consultant or assistant who demonstrates technical competence as well as trustworthiness and reliability, and who agrees to sign a non-disclosure affidavit and be bound by the terms of a protective order; and

e. If the request is for SGI, Form SF–85, ''Questionnaire for Non-Sensitive Positions,'' Form FD–258 (fingerprint card), and a credit check release form completed by the individual who seeks access to SGI and each individual who will aid the requester in evaluating the SGI. For security reasons, Form SF–85 can only be submitted electronically, through a restricted-access database. To obtain online access to the form, the requester should contact the NRC's Office of Administration at 301–492–3524.[2] The other completed forms must be signed in original ink, accompanied by a check or money order payable in the amount of $200.00 to the U.S. Nuclear Regulatory Commission for each individual, and mailed to the Office of Administration, Security Processing Unit, Mail Stop TWB–05 B32M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0012.

These forms will be used to initiate the background check, which includes fingerprinting as part of a criminal history records check. **Note:** Copies of these forms do *not* need to be included with the request letter to the Office of the Secretary, but the request letter should state that the forms and fees have been submitted as described above.

4. To avoid delays in processing requests for access to SGI, all forms should be reviewed for completeness and accuracy (including legibility) before submitting them to the NRC. Incomplete packages will be returned to the sender and will not be processed.

5. Based on an evaluation of the information submitted under items 2 and 3.a through 3.d, above, the NRC staff will determine within ten days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI or need to know the SGI requested. For SGI, the need to know determination is made based on whether the information requested is necessary (*i.e.,* indispensable) for the proposed recipient to proffer and litigate a specific contention in this NRC proceeding[3] and whether the proposed recipient has the technical competence (demonstrable knowledge, skill, training, education, or experience) to evaluate and use the specific SGI requested in this proceeding.

6. If standing and need to know SGI are shown, the NRC staff will further determine based upon completion of the background check whether the proposed recipient is trustworthy and reliable. The NRC staff will conduct (as necessary) an inspection to confirm that the recipient's information protection systems are sufficient to protect SGI from inadvertent release or disclosure. Recipients may opt to view SGI at the NRC's facility rather than establish their own SGI protection program to meet SGI protection requirements.

7. A request for access to SUNSI or SGI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI or a need to know for SGI, and that the proposed recipient of SGI is trustworthy and reliable;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI and/or SGI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[4] Any protective order issued shall provide that the petitioner must file SUNSI or SGI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.

8. If the request for access to SUNSI or SGI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[5] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within ten (10) days, describing the obstacles to the agreement.

9. If the request for access to SUNSI is denied by the NRC staff or a request for access to SGI is denied by NRC staff either after a determination on standing and need to know or, later, after a determination on trustworthiness and reliability, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing or need to know for SGI by filing a challenge within ten (10) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer. In the same manner, an SGI requester may challenge an adverse determination on trustworthiness and reliability by filing a challenge within fifteen (15) days of receipt of that determination.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within ten (10) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these

[2] The requester will be asked to provide his or her full name, social security number, date and place of birth, telephone number, and e-mail address. After providing this information, the requester usually should be able to obtain access to the online form within one business day.

[3] Broad SGI requests under these procedures are thus highly unlikely to meet the standard for need to know; furthermore, staff redaction of information from requested documents before their release may be appropriate to comport with this requirement. These procedures do not authorize unrestricted disclosure or less scrutiny of a requester's need to know than ordinarily would be applied in connection with an already-admitted contention.

[4] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

[5] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (*e.g.,* as with proprietary information).

procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[6]

10. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and/or SGI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

Dated at Rockville, Maryland, this 1st day of May 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) AND SAFEGUARDS INFORMATION (SGI) IN THIS PROCEEDING

Day	Event/activity
0	Publication of notice of receipt of update to application for facility operating license and notice of opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI and/or SGI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted (e.g., showing technical competence for access to SGI); and, for SGI, including application fee for fingerprint/background check.
60	Deadline for submitting petition for intervention containing: (i) Demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI and/or SGI (+25 Answers to petition for intervention; +7 petitioner/requester reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows (1) need for SUNSI or (2) need to know for SGI. (For SUNSI, NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). If NRC staff makes the finding of need to know for SGI and likelihood of standing, NRC staff begins background check (including fingerprinting for a criminal history records check), information processing (preparation of redactions or review of redacted documents), and readiness inspections.
25	If NRC staff finds no "need," "need to know," or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, need to know for SGI, and trustworthiness and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit (or to make a determination that the proposed recipient of SGI is not trustworthy or reliable). NOTE: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI and/or SGI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI and/or SGI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI or SGI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI and/or SGI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

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BILLING CODE 7590–01–P

[6] As of October 15, 2007, the NRC's final "E–Filing Rule" became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; Aug. 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI/SGI requests submitted to the NRC staff under these procedures.

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0409]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 1.213, "Qualification of Safety-Related Motor Control Centers for Nuclear Power Plants."

FOR FURTHER INFORMATION CONTACT: Mark Orr, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 251–7495 or e-mail to *Mark.Orr@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC or Commission) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Regulatory Guide 1.213 was issued with a temporary identification as Draft Regulatory Guide, DG–1149. This regulatory guide describes a method that the staff of the NRC deems acceptable for complying with the Commission's regulations for qualification of safety-related motor control centers for nuclear power plants.

The Commission's regulations in Title 10, Part 50, ''Domestic Licensing of Production and Utilization Facilities,'' of the *Code of Federal Regulations* (10 CFR part 50), require that structures, systems, and components in a nuclear power plant that are important to safety be designed to accommodate the effects of environmental conditions (i.e., they must remain functional under postulated design-basis events (DBEs)). Toward that end, General Design Criteria 1, 2, 4, and 23 of Appendix A, ''General Design Criteria for Nuclear Power Plants,'' to 10 CFR Part 50 contain the general requirements. Augmenting those general requirements are the specific requirements pertaining to qualification of certain electrical equipment important to safety that appear in 10 CFR 50.49, ''Environmental Qualification of Electric Equipment Important to Safety for Nuclear Power Plants.'' In addition, Criterion III, ''Design Control,'' of Appendix B, ''Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants,'' to 10 CFR part 50, requires that test programs, when used to verify the adequacy of a specific design feature, should include suitable qualification testing of a prototype unit under the most severe DBE.

II. Further Information

In July 2008, DG–1149 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on September 19, 2008. The staff's responses to the public comments are located in the NRC's Agencywide Documents Access and Management System (ADAMS), Accession Number ML083010458.

Electronic copies of Regulatory Guide 1.213 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, Maryland, this 8th day of May, 2009.

For the Nuclear Regulatory Commission.

Richard A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–11389 Filed 5–14–09; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review, Request for Comments

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) is forwarding two (2) Information Collection Requests (ICR) to the Office of Information and Regulatory Affairs (OIRA), Office of Management and Budget (OMB) to request extensions without change of currently approved collections of information. Our ICR describes the information we seek to collect from the public. Review and approval by OIRA ensures that we impose appropriate paperwork burdens.

The RRB invites comments on the proposed collections of information to determine (1) The practical utility of the collections; (2) the accuracy of the estimated burden of the collections; (3) ways to enhance the quality, utility and clarity of the information that is the subject of collection; and (4) ways to minimize the burden of collections on respondents, including the use of automated collection techniques or other forms of information technology. Comments to RRB or OIRA must contain the OMB control number of the ICR. For proper consideration of your comments, it is best if RRB and OIRA receive them within 30 days of publication date

1. Application for Survivor Death Benefits; OMB 3220–0031

Under Section 6 of the Railroad Retirement Act (RRA), lump-sum death benefits are payable to surviving widow and widowers, children and certain other dependents. Lump-sum death benefits are payable after the death of a railroad employee *only* if there are no qualified survivors of the employee immediately eligible for annuities. With the exception of the residual death benefit, eligibility for survivor benefits depends on whether the employee was ''insured'' under the RRA at the time of death. If a deceased employee was not so insured, jurisdiction of any survivor benefits payable is transferred to the Social Security Administration and survivor benefits are paid by that agency instead of the RRB. The collection obtains the information required by the RRB to determine entitlement to and amount of the survivor death benefits applied for.

The RRB currently utilizes Form(s) AA–11a *(Designation for Change of Beneficiary for Residual Lump-Sum),* AA–21cert, *(Application Summary and Certification),* AA–21 *(Application for Lump-Sum Death Payment and Annuities Unpaid at Death),* G–131 *(Authorization of Payment and Release of All Claims to a Death Benefit or Accrued Annuity Payment),* and G–273a *(Funeral Director's Statement of Burial Charges),* to obtain the necessary information. One response is requested of each respondent. Completion is required to obtain benefits.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
AA–11a	200	10	33
AA–21cert (with assistance)	5,400	20	1,800

ESTIMATE OF ANNUAL RESPONDENT BURDEN—Continued

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
AA–21 manual (without assistance)	300	40	200
G–131	600	5	50
G–273a	5,000	10	833
Total	11,500	.....	2,916

Previous Requests for Comments: The RRB has already published the initial 60-day notice (74 FR 7274 & 7275 on February 13, 2009) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Application for Survivor Death Benefits.

OMB Control Number: OMB 3220–0031.

Form(s) submitted: AA–11a, AA–21cert, AA–21, G–131, G–273a.

Expiration date of current OMB clearance: 5/31/2009.

Type of request: Extension without change of a currently approved collection.

Affected public: Individuals or households.

Abstract: The collection obtains the information needed to pay death benefits and annuities due but unpaid at death under the Railroad Retirement Act. Benefits are paid to designated beneficiaries or to survivors in a priority designated by law.

Changes proposed: The RRB proposes no changes to the forms in the collection.

The total burden estimate for the ICR is as follows:

Estimated annual number of respondents: 11,500.

Total annual responses: 11,500.

Total annual reporting hours: 2,916.

2. Pension Plan Reports; OMB 3220–0089

Under Section 2(b) of the Railroad Retirement Act (RRA), the Railroad Retirement Board (RRB) pays supplemental annuities to qualified RRB employee annuitants. A supplemental annuity, which is computed according to Section 3(e) of the RRA, can be paid at age 60 if the employee has at least 30 years of creditable railroad service or at age 65 if the employee has 25–29 years of railroad service. In addition to 25 years of service, a ''current connection'' with the railroad industry is required. Eligibility is further limited to employees who had at least one month of rail service before October 1981 and were awarded regular annuities after June 1966. Further, if an employee's 65th birthday was prior to September 2, 1981, he or she must not have worked in rail service after certain closing dates (generally the last day of the month following the month in which age 65 is attained).

Under Section 2(h)(2) of the RRA, the amount of the supplemental annuity is reduced if the employees receive monthly pension payments, or lump-sum pension payments, from their former railroad employer, which are based in whole or in part on contributions from that railroad employer. The employees' own contributions to their pension accounts do not cause a reduction. An employer private pension is described in 20 CFR 216.40–216.42.

The RRB requires the following information from railroad employers to calculate supplemental annuities: (a) The current status of railroad employer pension plans and whether such employer pension plans cause reductions to the RRB supplemental annuity; (b) the amount of the employer private pension being paid to the employee; (c) whether or not the employer made contributions to the pension; (d) whether or not the employee was cashed out before attaining retirement age under the employer pension plan or received the pension in a lump-sum payment in lieu of monthly pension payments; and (e) whether the employer pension plan continues when the employer status under the RRA changes. The requirement that railroad employers furnish pension information to the RRB is contained in 20 CFR 209.2.

The RRB currently utilizes Form(s) G–88p (Employer's Supplemental Pension Report), G–88r (Request for Information About New or Revised Pension Plan), and G–88r.1 (Request for Additional Information about Employer Pension Plan in Case of Change of Employer Status or Termination of Pension Plan), to obtain the necessary information from railroad employers. Multiple responses may be received from a respondent employer. Completion is mandatory.

The estimated annual respondent burden is as follows:

ESTIMATE OF ANNUAL RESPONDENT BURDEN

Form No.(s)	Annual responses	Time (min)	Burden (hrs)
G–88p	750	8	100
G–88r	10	10	2
G–88r.1	5	7	1
Total	765	.....	103

Previous Requests for Comments: The RRB has already published the initial 60-day notice (74 FR 10971 & 10972 on March 13, 2009) required by 44 U.S.C. 3506(c)(2). That request elicited no comments.

Information Collection Request (ICR)

Title: Pension Plan Reports.

OMB Control Number: OMB 3220–0089.

Form(s) submitted: G–88p, G–88r and G88r.1.

Expiration date of current OMB clearance: 5/31/2009.

Type of request: Extension with change of a currently approved collection.

Affected public: Business or other for profit.

Abstract: The Railroad Retirement Act provides for payment of a supplemental annuity to a qualified railroad retirement annuitant. The collection obtains information from the annuitant's employer to determine (a) the existence of a railroad employer pension plans and whether such plans, if they exist, require a reduction to supplemental annuities paid to the employer's former employees and (b) the amount of supplemental annuities due railroad employees.

Changes Proposed: The RRB proposes no changes to the forms in the collection.

The total burden estimate for the ICR is as follows:

Estimated annual number of respondents: 500.

Total annual responses: 765.

Total annual reporting hours: 103.

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Charles Mierzwa, the agency clearance officer at (312–751–3363) or *Charles.Mierzwa@rrb.gov.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 or *Ronald.Hodapp@rrb.gov* and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E9–11404 Filed 5–14–09; 8:45 am]

BILLING CODE 7905–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11740 and #11741]

Alabama Disaster #AL–00022

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Alabama (FEMA–1836–DR), dated 05/08/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.

Incident Period: 04/10/2009 through 04/13/2009.

Effective Date: 05/08/2009.

Physical Loan Application Deadline Date: 07/07/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/08/2010.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 05/08/2009, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Cullman, Dekalb, Jackson, Jefferson, Marshall.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	4.500.
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000.

The number assigned to this disaster for physical damage is 11740B and for economic injury is 11741B.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–11391 Filed 5–14–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension: Rule 489 and Form F–N; SEC File No. 270–361; OMB Control No. 3235–0411.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below:

Rule 489 (17 CFR 230.489) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires foreign banks and foreign insurance companies and holding companies and finance subsidiaries of foreign banks and foreign insurance companies that are exempted from the definition of ''investment company'' by virtue of Rules 3a–1 (17 CFR 270.3a–1), 3a–5 (17 CFR 270.3a–5), and 3a–6 (17 CFR 270.3a–6) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) to file Form F–N (17 CFR 239.43), under the Securities Act of 1933 to appoint an agent for service of process when making a public offering of securities in the United States. Approximately 19 entities are required by Rule 489 to file Form F–N, which is estimated to require an average of one hour to complete. The estimated annual burden of complying with the rule's filing requirement is approximately 24 hours, as some of the entities submitted multiple filings.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The collection of information under Form F–N is mandatory. The information provided by the Form is not kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 10102, New Executive

Office Building, Washington, DC 20503 or send an e-mail to Shagufta Ahmed at *Shagufta_Ahmed@omb.eop.gov;* and (ii) Charles Boucher, Director/CIO, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, VA 22312; or send an e-mail to: *PRA_Mailbox@sec.gov*. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 11, 2009.

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11361 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59898; File No. SR–NYSE–2009–37]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving Proposed Rule Change Implementing a Cap on Vendors' Administrative Charges for NYSE OpenBook

May 11, 2009.

I. Introduction

On March 26, 2009, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce a cap on the monthly charges that broker-dealers and vendors are required to pay for their use of NYSE OpenBook data for the purposes of administering their provision of NYSE OpenBook product offerings. The proposed rule change was published for comment in the **Federal Register** on April 8, 2009.[3] The Commission received no comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to introduce a cap on the monthly charges that broker-dealers and vendors are required to pay for their use of NYSE OpenBook data for the purposes of administering their provision of NYSE OpenBook product offerings. A one-year pilot program to simplify and modernize market data administration (the ''Unit of Count Filing'') was recently approved for its NYSE OpenBook product packages.[4] The Unit of Count Filing redefined some of the basic ''units of measure'' that vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages.

Under the proposal, the Exchange proposes to establish a maximum monthly amount of $1500 (the ''Monthly Maximum'') for entitlements consisting of unique individuals within a vendor's organization to whom the vendor distributes NYSE OpenBook data for the sole purpose of administering the vendor's distribution of NYSE OpenBook services externally to the vendor's customers. The Monthly Maximum of $1500 means that a vendor would have to pay for no more than 25 NYSE OpenBook administrative personnel.

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[6] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and the requirements under Section 6(b)(5)[7] that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission also finds that the proposed rule change is consistent with the provisions of Section 6(b)(8) of the Act,[8] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Finally, the Commission finds that the proposed rule change is consistent with Rule 603(a) of Regulation NMS,[9] adopted under Section 11A(c)(1) of the Act, which requires an exclusive processor that distributes information with respect to quotations for or transactions in an NMS stock to do so on terms that are fair and reasonable and that are not unreasonably discriminatory.[10]

This proposal would cap the fees for NYSE OpenBook when used by vendors for administrative purposes. The Commission has reviewed the proposal using the approach set forth in the NYSE Arca Order for non-core market data fees.[11] The Commission recently found that NYSE was subject to significant competitive forces in setting fees for its depth-of-book order data in the Unit of Count Filing.[12] There are a variety of alternative sources of information that impose significant competitive pressures on the NYSE in setting the terms for distributing its depth-of-book order data. The Commission believes that the availability of those alternatives, as well as the NYSE's compelling need to attract order flow, imposed significant competitive pressure on the NYSE to act equitably, fairly, and reasonably in setting the terms of its proposal.

Because the NYSE was subject to significant competitive forces in setting the terms of the proposal, the Commission will approve the proposal in the absence of a substantial countervailing basis to find that its terms nevertheless fail to meet an applicable requirement of the Act or the rules thereunder. An analysis of the proposal does not provide such a basis.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–2009–37) is hereby approved.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59681 (April 1, 2009), 74 FR 16017.

[4] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

[5] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(b)(8).

[9] 17 CFR 242.603(a).

[10] NYSE is an exclusive processor of NYSE depth-of-book data under Section 3(a)(22)(B) of the Act, 15 U.S.C. 78c(a)(22)(B), which defines an exclusive processor as, among other things, an exchange that distributes information with respect to quotations or transactions on an exclusive basis on its own behalf.

[11] Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770 (December 9, 2008) (SR–NYSEArca–2006–21) (''NYSE Arca Order''). In the NYSE Arca Order, the Commission describes in great detail the competitive factors that apply to non-core market data products. The Commission hereby incorporates by reference the data and analysis from the NYSE Arca Order into this order.

[12] *See* Securities Exchange Act Release No. 59544 (March 9, 2009), 74 FR 11162 (March 16, 2009) (SR–NYSE–2008–131).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11356 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59891; File No. SR–Phlx–2009–24]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, Increasing Transaction Fees for Linkage Inbound Principal Orders and Principal Acting as Agent Orders

May 8, 2009.

I. Introduction

On March 24, 2009, the NASDAQ OMX PHLX, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change seeking to increase transaction fees applicable to the execution of Principal Acting as Agent Orders (''P/A Orders'')[3] and Principal Orders (''P Orders'')[4] sent to the Exchange via the Intermarket Options Linkage (''Linkage'') under the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage (the ''Plan'').[5] On March 26, 2009, Phlx submitted Amendment No. 1 to the proposed rule change. The proposed rule change was published for comment in the **Federal Register** on April 8, 2009.[6] The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Exchange proposes to amend the Equity Options Fees portion of its fee schedule relating to transaction fees applicable to the execution of P/A Orders and P Orders sent to the Linkage under the Plan. Specifically, the Exchange proposes to increase its transaction fees for P/A Orders from the current $0.15 per option contract to $0.30 per option contract, and for P Orders from the current $0.25 per option contract to $0.45 per contract. This proposal is part of an existing pilot program, which is scheduled to expire July 31, 2009.[7]

The Exchange states that the purpose of the proposed rule change is to raise revenue for the Exchange. The Exchange also represents that, consistent with current practice, the Exchange: (i) Will charge the clearing member organization of the sender of P Orders and P/A Orders; and (ii) will not charge for the execution of Satisfaction Orders sent through Linkage.

The Exchange also proposes a technical amendment to the schedule of Equity Option Fees by correcting a typographical error, changing the word ''overlaying'' to read ''overlying.''

III. Discussion and Commission Findings

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8] In particular, the Commission finds that the proposal is consistent with Section 6(b)(4) of the Act,[9] which requires that an exchange have rules that provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Commission notes that the Options Linkage fees are assessed pursuant to a pilot scheduled to end on July 31, 2009 and that the Commission is continuing to evaluate whether such fees are appropriate.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–2009–24), as amended, is hereby approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11357 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59893; File No. SR–NYSEArca–2009–38]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Implementing Fee Change

May 8, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on April 30, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposal pursuant to Section 19(b)(3)(A)[4] of the Act and Rule 19b–4(f)(2)[5] thereunder. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2009. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] A P/A Order, is an order for the principal account of a specialist (or equivalent entity on another Participant Exchange that is authorized to represent Public Customer orders), reflecting the terms of a related unexecuted Public Customer order for which the specialist is acting as agent. *See* Exchange Rule 1083(k)(i).

[4] A P Order is an order for the principal account of an Eligible Market Maker. *See* Exchange Rule 1083(k)(ii).

[5] *See* Securities Exchange Act Release Nos. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000) (order approving the Plan) and 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000) (order approving Phlx as a participant in the Plan).

[6] *See* Securities Exchange Act Release No. 59669 (April 1, 2009), 74 FR 16026.

[7] *See* Securities Exchange Act Release No. 58144 (July 11, 2008), 73 FR 41394 (July 18, 2008) (SR–Phlx–2008–49).

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(2).

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes adding a fee for Market-on-Close (''MOC'') and Limit-on-Close (''LOC'') orders executed in the Closing Auction. A fee of $.0005 per share will be charged for all MOC and LOC orders executed in the Closing Auction in NYSE Arca primary listed securities, including all exchange traded funds (''ETFs'') and exchange traded notes (''ETNs''). The Exchange also proposes charging a fee of $.0005 per share for all MOC and LOC orders executed in the Closing Auction in Tape C ETFs and ETNs. Currently, the Exchange does not charge a fee for orders executed in the Closing Auction. Lead Market Makers (''LMMs'') executing orders in the Closing Auction in securities in which the firm is registered as the LMM will continue to not be charged a fee. The proposed fee will become operative on May 1, 2009, and will apply to all pricing levels, including tiered and basic rate pricing. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all similarly situated Users.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''), in general, and Section 6(b)(4) of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed changes to the Schedule are equitable in that they apply uniformly to all similarly situated Users.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change is effective upon filing pursuant to Section 19(b)(3)(A)[6] of the Act and subparagraph (f)(2) of Rule 19b–4[7] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca on its members. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–38 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–38. 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 the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–38 and should be submitted on or before June 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11358 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59896; File No. SR–CBOE–2009–030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Regarding Appointments and Obligations of CBSX DPMs

May 11, 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 May 7, 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The filing proposes to modify the CBOE Stock Exchange (''CBSX'') Designated Primary Market-Maker (''DPM'') appointment and obligation rules. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify CBSX Rule 53.54 to provide CBSX with flexibility to commence trading a security without an assigned CBSX DPM.[3] Several stock exchanges provide a trading venue for equity securities without assigned specialists or primary market makers. On CBSX, CBSX DPMs do not act as agent for orders submitted to CBSX and the matching of trades is handled by the CBSX system. Accordingly, trading can occur on the CBSX platform without participation by a CBSX DPM. The proposed rule change is not intended to in any way affect existing DPM appointments, instead it will allow CBSX to offer for trading a broader range of national market system securities. There are currently securities not traded on CBSX because CBSX DPMs have opted to not seek assignments in such securities (these are typically low volume securities). The proposed filing will allow CBSX users the ability to trade these stocks on CBSX. The Exchange does not believe that allowing trading in these stocks without a DPM will have an adverse impact on the Exchange's market in these securities. CBSX will notify participants, via circular, when stocks without assigned DPMs are added for trading.

The filing also proposes to modify the CBSX DPM obligations in Rule 53.56 to not require CBSX DPMs to quote until 8:30 a.m. Chicago time. Currently, CBSX DPMs are obligated to provide opening quotes (trading starts at 8:15 a.m. Chicago time) and to continuously quote throughout the day. As proposed, CBSX DPMs desiring to submit opening quotes could continue to do so, but would not be required to continuously quote until 8:30 Chicago time when trading volumes are more meaningful.

Lastly, the filing proposes to eliminate Rule 53.54(c) which governed the allocation process used by CBSX prior to its initial launch.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[4] in general and furthers the objectives of Section 6(b)(5) of the Act[5] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposal.

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 CBOE consents, the Commission will:

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2009–030 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2009–030. 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 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–2009–030 and should be submitted on or before June 5, 2009.

[3] A DPM is a Market-Maker with heightened responsibilities for assigned securities.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11360 Filed 5–14–09; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59895; File No. SR–NYSEArca–2009–40]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Relating to the Listing and Trading of ETFS Gold Trust

May 8, 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 May 1, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II 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 and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the ETFS Gold Trust (the ''Trust'') pursuant to NYSE Arca Equities Rule 8.201. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange's principal office and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to list and trade ETFS Gold Shares (''Shares'') of the Trust under NYSE Arca Equities Rule 8.201. Under NYSE Arca Equities Rule 8.201, the Exchange may propose to list and/or trade pursuant to unlisted trading privileges (''UTP'') ''Commodity-Based Trust Shares.''[3] The Commission has previously approved listing on the Exchange under NYSE Arca Equities Rule 8.201 shares of the streetTRACKS Gold Trust and iShares COMEX Gold Trust.[4] Previous to their listing on the Exchange, the Commission approved listing of the streetTRACKS Gold Trust on the New York Stock Exchange (''NYSE'') and listing of iShares COMEX Gold Trust on the American Stock Exchange LLC.[5] In addition, the Commission has approved trading of the streetTRACKS Gold Trust and iShares Silver Trust and [sic] on the Exchange pursuant to UTP.[6] The Commission also has approved listing of the iShares Silver Trust on the Exchange[7] and, previously, listing of the iShares Silver Trust on the American Stock Exchange LLC (now known as ''NYSE Amex LLC'').[8]

The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust. The investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the expenses of the Trust's operations.[9]

ETFS Services USA LLC is the sponsor of the Trust (''Sponsor''), The Bank of New York Mellon is the trustee of the Trust (''Trustee'')[10], and HSBC Bank USA, N.A. is the custodian of the Trust (''Custodian'').[11]

The Exchange represents that the Shares satisfy the requirements of NYSE Arca Equities Rule 8.201 and thereby qualify for listing on the Exchange.[12]

Operation of the Gold Bullion Market

The global trade in gold consists of Over-the-Counter (OTC) transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The OTC market trades on a 24-hour per day continuous basis and accounts for most global gold trading.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Commodity-Based Trust Shares are securities issued by a trust that represent investors' discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

[4] *See* Securities Exchange Act Release No. 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing on the Exchange of the streetTRACKS Gold Trust); Securities Exchange Act Release No. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (order approving listing on the Exchange of iShares COMEX Gold Trust).

[5] *See* Securities Exchange Act Release No. 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (SR–NYSE–2004–22) (order approving listing of streetTRACKS Gold Trust on NYSE); Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (SR–Amex–2004–38) (order approving listing of iShares COMEX Gold Trust on the American Stock Exchange LLC).

[6] *See* Securities Exchange Act Release Nos. 53520 (March 20, 2006), 71 FR 14977 (March 24, 2006) (SR–PCX–2005–117) (approving trading on the Exchange pursuant to UTP of the iShares Silver Trust); 51245 (February 23, 2005), 70 FR 10731 (March 4, 2005) (SR–PCX–2004–117) (approving trading on the Exchange of the streetTRACKS Gold Trust pursuant to UTP).

[7] *See* Securities Exchange Act Release Nos. 58956 (November 14, 2008), 73 FR 71074 (November 24, 2008) (SR–NYSEArca–2008–124) (approving listing on the Exchange of the iShares Silver Trust)).

[8] *See* Securities Exchange Act Release No. 53521 (March 20, 2006), 71 FR 14967 (March 24, 2006) (SR–Amex–2005–72) (approving listing on the American Stock Exchange LLC of the iShares Silver Trust).

[9] *See* the Registration Statement for the ETFS Gold Trust on Form S–1, filed with the Commission on March 26, 2009 (No. 333–158221) (''Registration Statement''). The descriptions of the Trust, the Shares and the gold market contained herein are based on the Registration Statement.

[10] The Trustee is generally responsible for the day-to-day administration of the Trust, including keeping the Trust's operational records. The Trustee's principal responsibilities include (1) transferring the Trust's gold as needed to pay the Sponsor's Fee in gold (gold transfers are expected to occur approximately monthly in the ordinary course), (2) valuing the Trust's gold and calculating the NAV of the Trust and the NAV per Share, (3) receiving and processing orders from Authorized Participants to create and redeem Baskets and coordinating the processing of such orders with the Custodian and DTC, (4) selling the Trust's gold as needed to pay any extraordinary Trust expenses that are not assumed by the Sponsor, (5) when appropriate, making distributions of cash or other property to Shareholders, and (6) receiving and reviewing reports from or on the Custodian's custody of and transactions in the Trust's gold. The Trustee shall, with respect to directing the Custodian, act in accordance with the instructions of the Sponsor.

[11] The Custodian is responsible for safekeeping for the Trust gold deposited with it by Authorized Participants in connection with the creation of Baskets. The Custodian is also responsible for selecting its direct subcustodians, if any. The Custodian facilitates the transfer of gold in and out of the Trust through the unallocated gold accounts it will maintain for each Authorized Participant and the unallocated and allocated gold accounts it will maintain for the Trust. The Custodian is responsible for allocating specific bars of gold bullion to the Trust's allocated gold account. The Custodian will provide the Trustee with regular reports detailing the gold transfers in and out of the Trust's unallocated and allocated gold accounts and identifying the gold bars held in the Trust's allocated gold account.

[12] With respect to application of Rule 10A–3 (17 CFR 240.10A–3) under the Securities Exchange of 1934 (''Act'') (15 U.S.C. 78a), the Trust relies on the exemption contained in Rule 10A–3(c)(7).

Market makers, as well as others in the OTC market, trade with each other and with their clients on a principal-to-principal basis. All risks and issues of credit are between the parties directly involved in the transaction. Market makers include the market-making members of the LBMA, the trade association that acts as the coordinator for activities conducted on behalf of its members and other participants in the London bullion market. The ten market-making members of the LBMA are: Barclays Bank plc, Deutsche Bank AG, HSBC Bank USA, N.A. (through its London branch), Goldman Sachs International, JPMorgan Chase Bank, ScotiaMocatta (a division of the Bank of Nova Scotia), Société Générale, Mitsui & Co Precious Metals Inc, Royal Bank of Canada, and UBS AG. The OTC market provides a relatively flexible market in terms of quotes, price, size, destinations for delivery and other factors. Bullion dealers customize transactions to meet clients' requirements. The OTC market has no formal structure and no open-outcry meeting place.[13]

According to the Registration Statement, the main centers of the OTC market are London and New York. Mining companies, central banks, manufacturers of jewelry and industrial products, together with investors and speculators, tend to transact their business through one of these market centers. Centers such as Dubai and several cities in the Far East also transact substantial OTC market business, typically involving jewelry and small bars (1 kilogram or less). Bullion dealers have offices around the world and most of the world's major bullion dealers are either members or associate members of the LBMA. Of the ten market-making members of the LBMA, six offer clearing services. As of November 24, 2008, there were a further 59 full members, plus a number of associate members around the world.

In the OTC market, the standard size of gold trades between market makers ranges between 5,000 and 10,000 ounces. Bid-offer spreads are typically 50 US cents per ounce. Certain dealers are willing to offer clients competitive prices for much larger volumes, including trades over 100,000 ounces, although this will vary according to the dealer, the client and market conditions, as transaction costs in the OTC market are negotiable between the parties and therefore vary widely. Cost indicators can be obtained from various information service providers as well as dealers.

Liquidity in the OTC market can vary from time to time during the course of the 24-hour trading day. Fluctuations in liquidity are reflected in adjustments to dealing spreads—the differential between a dealer's ''buy'' and ''sell'' prices. The period of greatest liquidity in the gold market generally occurs at the time of day when trading in the European time zones overlaps with trading in the United States, which is when OTC market trading in London, New York and other centers coincides with futures and options trading on the COMEX. This period lasts for approximately four hours each New York business day morning.

The London Bullion Market

Although the market for physical gold is distributed globally, most OTC market trades are cleared through London. In addition to coordinating market activities, the LBMA acts as the principal point of contact between the market and its regulators. A primary function of the LBMA is its involvement in the promotion of refining standards by maintenance of the ''London Good Delivery Lists,'' which are the lists of LBMA accredited melters and assayers of gold. The LBMA also coordinates market clearing and vaulting, promotes good trading practices and develops standard documentation.

The term ''loco London'' gold refers to gold physically held in London that meets the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of a LBMA acceptable refiner) and appearance set forth in ''The Good Delivery Rules for Gold and Silver Bars'' published by the LBMA. Gold bars meeting these requirements are described in this prospectus from time to time as ''London Good Delivery Bars.'' The unit of trade in London is the troy ounce, whose conversion between grams is: 1,000 grams = 32.1507465 troy ounces and 1 troy ounce = 31.1034768 grams. A London Good Delivery Bar is acceptable for delivery in settlement of a transaction on the OTC market. Typically referred to as 400-ounce bars, a London Good Delivery Bar must contain between 350 and 430 fine troy ounces of gold, with a minimum fineness (or purity) of 995 parts per 1,000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar. A London Good Delivery Bar must also bear the stamp of one of the melters and assayers who are on the LBMA approved list. Unless otherwise specified, the gold spot price always refers to that of a London Good Delivery Bar. Business is generally conducted over the phone and through electronic dealing systems.

Twice daily during London trading hours there is a fix which provides reference gold prices for that day's trading. Many long-term contracts will be priced on the basis of either the morning (a.m.) or afternoon (p.m.) London Fix, and market participants will usually refer to one or the other of these prices when looking for a basis for valuations. The London Fix is the most widely used benchmark for daily gold prices and is quoted by various financial information sources.

Formal participation in the London Fix is traditionally limited to five members, each of which is a bullion dealer and a member of the LBMA. The chairmanship now rotates annually among the five member firms. The morning session of the fix starts at 10:30 a.m. London time and the afternoon session starts at 3 p.m. London time. The members of the gold fixing are currently The Bank of Nova Scotia—ScotiaMocatta, Deutsche Bank AG, HSBC Bank USA, N.A., Société Générale and Barclays Bank plc. Any other market participant wishing to participate in the trading on the fix is required to do so through one of the five gold fixing members.

Orders are placed either with one of the five fixing members or with another bullion dealer who will then be in contact with a fixing member during the fixing. The fixing members net-off all orders when communicating their net interest at the fixing. The fix begins with the fixing chairman suggesting a ''trying price,'' reflecting the market price prevailing at the opening of the fix. This is relayed by the fixing members to their dealing rooms which have direct communication with all interested parties. Any market participant may enter the fixing process at any time, or adjust or withdraw his order. The gold price is adjusted up or down until all the buy and sell orders are matched, at which time the price is declared fixed. All fixing orders are transacted on the basis of this fixed price, which is instantly relayed to the market through various media. The London Fix is widely viewed as a full and fair representation of all market interest at the time of the fix.

Futures Exchanges

According to the Registration Statement, the most significant gold futures exchanges are the COMEX and

[13] Terms relating to the Trust and the Shares referred to, but not defined, herein are defined in the Registration Statement.

the Tokyo Commodity Exchange (''TOCOM''). The COMEX is the largest exchange in the world for trading precious metals futures and options and has been trading gold since 1974. The TOCOM has been trading gold since 1982. Trading on these exchanges is based on fixed delivery dates and transaction sizes for the futures and options contracts traded. Trading costs are negotiable. As a matter of practice, only a small percentage of the futures market turnover ever comes to physical delivery of the gold represented by the contracts traded. Both exchanges permit trading on margin. Margin trading can add to the speculative risk involved given the potential for margin calls if the price moves against the contract holder. The COMEX operates through a central clearance system. On June 6, 2003, TOCOM adopted a similar clearance system. In each case, the exchange acts as a counterparty for each member for clearing purposes.

There are other gold exchange markets, such as the Istanbul Gold Exchange (trading gold since 1995), the Shanghai Gold Exchange (trading gold since October 2002) and the Hong Kong Chinese Gold & Silver Exchange Society (trading gold since 1918).

Market Regulation

The global gold markets are overseen and regulated by both governmental and self-regulatory organizations. In addition, certain trade associations have established rules and protocols for market practices and participants. In the United Kingdom, responsibility for the regulation of the financial market participants, including the major participating members of the LBMA, falls under the authority of the Financial Services Authority (FSA) as provided by the Financial Services and Markets Act 2000 (FSM Act). Under this act, all UK-based banks, together with other investment firms, are subject to a range of requirements, including fitness and properness, capital adequacy, liquidity, and systems and controls.

The FSA is responsible for regulating investment products, including derivatives, and those who deal in investment products. Regulation of spot, commercial forwards, and deposits of gold and silver not covered by the FSM Act is provided for by The London Code of Conduct for Non-Investment Products, which was established by market participants in conjunction with the Bank of England.

The TOCOM has authority to perform financial and operational surveillance on its members' trading activities, scrutinize positions held by members and large-scale customers, and monitor the price movements of futures markets by comparing them with cash and other derivative markets' prices. To act as a Futures Commission Merchant Broker, a broker must obtain a license from Japan's Ministry of Economy, Trade and Industry (METI), the regulatory authority that oversees the operations of the TOCOM.

The Trust will not trade in gold futures contracts on the COMEX or on any other futures exchange. The Trust will take delivery of physical gold that complies with the COMEX gold delivery rules or the LBMA gold delivery rules. Because the Trust will not trade in gold futures contracts on any futures exchange, the Trust will not be regulated by the CFTC under the Commodity Exchange Act as a ''commodity pool,'' and will not be operated by a CFTC-regulated commodity pool operator. Investors in the Trust will not receive the regulatory protections afforded to investors in regulated commodity pools, nor may the COMEX or any futures exchange enforce its rules with respect to the Trust's activities. In addition, investors in the Trust will not benefit from the protections afforded to investors in gold futures contracts on regulated futures exchanges.

The activities of the Trust will be limited to (1) issuing Baskets in exchange for the gold deposited with the Custodian as consideration, (2) delivering gold as necessary to cover the Sponsor's Fee and selling gold as necessary to pay Trust expenses not assumed by the Sponsor and other liabilities, and (3) delivering gold in exchange for Baskets surrendered for redemption. The Trust will not be actively managed. It will not engage in any activities designed to obtain a profit from, or to ameliorate losses caused by, changes in the price of gold.

According to the Registration Statement, the investment objective of the Trust is for the Shares to reflect the performance of the price of gold bullion, less the Trust's expenses. The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in gold. An investment in physical gold requires expensive and sometimes complicated arrangements in connection with the assay, transportation, warehousing and insurance of the metal. Although the Shares will not be the exact equivalent of an investment in gold, they provide investors with an alternative that allows a level of participation in the gold market through the securities market.

According to the Registration Statement, the Trust is not registered as an investment company under the Investment Company Act of 1940 and is not required to register under such act. The Trust will not hold or trade in commodity futures contracts regulated by the Commodity Exchange Act (''CEA''), as administered by the Commodity Futures Trading Commission (''CFTC''). The Trust is not a commodity pool for purposes of the CEA, and neither the Sponsor nor the Trustee is subject to regulation by the CFTC as a commodity pool operator or a commodity trading advisor in connection with the Shares.

Secondary Market Trading

While the Trust's investment objective is for the Shares to reflect the performance of gold bullion, less the expenses of the Trust, the Shares may trade in the secondary market on the NYSE Arca at prices that are lower or higher relative to their net asset value (''NAV'') per Share. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the COMEX and London. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the global gold market will be reduced after the close of the COMEX at 1:30 p.m. New York time. As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Trust Expenses

The Trust's only ordinary recurring expense is expected to be equal to the Sponsor's Fee. In exchange for the Sponsor's Fee, the Sponsor will assume specified administrative and marketing expenses incurred by the Trust. The Sponsor will also pay the costs of the Trust's organization and the initial sale of the Shares, including the applicable SEC registration fees.

The Sponsor's Fee will accrue daily at a specified annualized rate payable monthly in arrears. The Sponsor, from time to time, may temporarily waive all or a portion of the Sponsor's Fee at its discretion for a stated period of time.

The Sponsor's Fee shall be paid by delivery of gold to an account maintained by the Custodian for the Sponsor on an Unallocated Basis, monthly on the first business day of the month in respect of fees payable for the prior month. The delivery shall be of that number of ounces of gold which equals the daily accrual of the Sponsor's Fee for such prior month calculated at the London p.m. Fix.

The Trust will deliver gold to the Sponsor to pay the Sponsor's Fee and

sell gold to raise the funds needed for the payment of all Trust expenses not assumed by the Sponsor. The purchase price received as consideration for such sales will be the Trust's sole source of funds to cover its liabilities. The Trust will not engage in any activity designed to derive a profit from changes in the price of gold.

Creation and Redemption of Shares

The Trust will create and redeem Shares daily, but only in one or more Baskets (a Basket equals a block of 50,000 Shares). The creation and redemption of Baskets will only be made in exchange for the delivery to the Trust or the distribution by the Trust of the amount of gold and any cash represented by the Baskets being created or redeemed, the amount of which will be based on the combined NAV of the number of Shares included in the Baskets being created or redeemed determined on the day the order to create or redeem Baskets is properly received.

Authorized Participants are the only persons that may place orders to create and redeem Baskets. Authorized Participants must be (1) registered broker-dealers or other securities market participants, such as banks and other financial institutions, which are not required to register as broker-dealers to engage in securities transactions, and (2) participants in the Depository Trust Company (''DTC''). To become an Authorized Participant, a person must enter into an Authorized Participant Agreement with the Sponsor and the Trustee. The Authorized Participant Agreement provides the procedures for the creation and redemption of Baskets and for the delivery of the gold and any cash required for such creations and redemptions.

All gold will be delivered to the Trust and distributed by the Trust in unallocated form through credits and debits between Authorized Participant Unallocated Accounts and the Trust Unallocated Account (as further described in the Registration Statement). Gold transferred from an Authorized Participant Unallocated Account to the Trust in unallocated form will first be credited to the Trust Unallocated Account. Thereafter, the Custodian will allocate specific bars of gold representing the amount of gold credited to the Trust Unallocated Account (to the extent such amount is representable by whole gold bars) to the Trust Allocated Account. The movement of gold is reversed for the distribution of gold to an Authorized Participant in connection with the redemption of Baskets.

All gold bullion represented by a credit to any Authorized Participant Unallocated Account and to the Trust Unallocated Account and all gold bullion held in the Trust Allocated Account with the Custodian must be of at least a minimum fineness (or purity) of 995 parts per 1,000 (99.5%) and otherwise conform to the rules, regulations practices and customs of the LBMA, including the specifications for a London Good Delivery Bar.

Creation Procedures

On any business day, an Authorized Participant may place an order with the Trustee to create one or more Baskets. Creation and redemption orders will be accepted on ''business days'' the NYSE Arca is open for regular trading. Settlements of such orders requiring receipt or delivery, or confirmation of receipt or delivery, of gold in the United Kingdom or another jurisdiction will occur on ''business days'' when (1) banks in the United Kingdom or such other jurisdiction and (2) the London gold markets are regularly open for business. If such banks or the London gold markets are not open for regular business for a full day, such a day will only be a ''business day'' for settlement purposes if the settlement procedures can be completed by the end of such day. Settlement of orders requiring receipt or delivery, or confirmation of receipt or delivery, of Shares will occur, after confirmation of the applicable gold delivery, on ''business days'' the NYSE Arca is open for regular trading. Purchase orders must be placed by 4 p.m. or the close of regular trading on the NYSE Arca, whichever is earlier. The day on which the Trustee receives a valid purchase order is the purchase order date.

By placing a purchase order, an Authorized Participant agrees to deposit gold with the Trust, or a combination of gold and cash, as described below. Prior to the delivery of Baskets for a purchase order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the purchase order.

The total deposit required to create each Basket (''Creation Basket Deposit'') will be an amount of gold and cash, if any, that is in the same proportion to the total assets of the Trust (net of estimated accrued but unpaid fees, expenses and other liabilities) on the date the order to purchase is properly received as the number of Shares to be created under the purchase order is in proportion to the total number of Shares outstanding on the date the order is received. The Sponsor anticipates that in the ordinary course of the Trust's operations a cash deposit will not be required for the creation of Baskets.

The amount of the required gold deposit is determined by dividing the number of ounces of gold held by the Trust by the number of Baskets outstanding, as adjusted for estimated accrued but unpaid fees and expenses as described in the next paragraph.

The amount of any required cash deposit is determined as follows. The estimated unpaid fees, expenses and liabilities of the Trust accrued through the purchase order date are subtracted from any cash held or receivable by the Trust as of the purchase order date. The remaining amount is divided by the number of Shares outstanding immediately before the purchase order date and then multiplied by the number of Shares being created pursuant to the purchase order. If the resulting amount is positive, this amount is the required cash deposit. If the resulting amount is negative, the amount of the required gold deposit will be reduced by the number of fine ounces of gold equal in value to that resulting amount, determined at the price of gold used in calculating the NAV of the Trust on the purchase order date. Fractions of a fine ounce of gold smaller than 0.001 of a fine ounce which are included in the gold deposit amount are disregarded.

Redemption Procedures

The procedures by which an Authorized Participant can redeem one or more Baskets will mirror the procedures for the creation of Baskets. On any business day, an Authorized Participant may place an order with the Trustee to redeem one or more Baskets. Redemption orders must be placed by 4 p.m. or the close of regular trading on the NYSE Arca, whichever is earlier. A redemption order so received is effective on the date it is received in satisfactory form by the Trustee. The redemption procedures allow Authorized Participants to redeem Baskets and do not entitle an individual Shareholder to redeem any Shares in an amount less than a Basket, or to redeem Baskets other than through an Authorized Participant.

By placing a redemption order, an Authorized Participant agrees to deliver the Baskets to be redeemed through DTC's book-entry system to the Trust not later than the third business day following the effective date of the redemption order. Prior to the delivery of the redemption distribution for a redemption order, the Authorized Participant must also have wired to the Trustee the non-refundable transaction fee due for the redemption order.

The redemption distribution from the Trust will consist of (1) a credit to the redeeming Authorized Participant's Authorized Participant Unallocated Account representing the amount of the gold held by the Trust evidenced by the Shares being redeemed plus or minus (2) the cash redemption amount. The cash redemption amount is equal to the value of all assets of the Trust other than gold less all estimated accrued but unpaid expenses and other liabilities, divided by the number of Baskets outstanding and multiplied by the number of Baskets included in the Authorized Participant's redemption order. The Trustee will distribute any positive cash redemption amount through DTC to the account of the Authorized Participant as recorded on DTC's book-entry system.

Termination Events

The Trustee will terminate and liquidate the Trust if the aggregate market capitalization of the Trust, based on the closing price for the Shares, was less than $350 million (as adjusted for inflation) at any time after the first anniversary after the Trust's formation and the Trustee receives, within six months after the last of those trading days, notice from the Sponsor of its decision to terminate the Trust. The Trustee will terminate the Trust if the CFTC determines that the Trust is a commodities pool under the CEA. The Trustee may also terminate the Trust upon the agreement of the owners of beneficial interests in the Shares (''Shareholders'') owning at least 75% of the outstanding Shares.

Additional information regarding the Shares and the operation of the Trust, including termination events, risks, and creation and redemption procedures, are described in the Registration Statement.

Valuation of Gold, Definition of Net Asset Value and Adjusted Net Asset Value (''ANAV'')

As of the London p.m. Fix on each day that the NYSE Arca is open for regular trading or, if there is no London p.m. Fix on such day or the London p.m. Fix has not been announced by 12 noon New York time on such day, as of 12 noon New York time on such day (Evaluation Time), the Trustee will evaluate the gold held by the Trust and determine both the ANAV and the NAV of the Trust.

At the Evaluation Time, the Trustee will value the Trust's gold on the basis of that day's London p.m. Fix or, if no London p.m. Fix is made on such day or has not been announced by the Evaluation Time, the next most recent London gold price fix (a.m. or p.m.) determined prior to the Evaluation Time will be used, unless the Sponsor determines that such price is inappropriate as a basis for evaluation. In the event the Sponsor determines that the London p.m. Fix or such other publicly available price as the Sponsor may deem fairly represents the commercial value of the Trust's gold is not an appropriate basis for evaluation of the Trust's gold, it shall identify an alternative basis for such evaluation to be employed by the Trustee.[14]

Once the value of the gold has been determined, the Trustee will subtract all estimated accrued but unpaid fees, expenses and other liabilities of the Trust from the total value of the gold and all other assets of the Trust (other than any amounts credited to the Trust's reserve account, if established). The resulting figure is the ANAV of the Trust. The ANAV of the Trust is used to compute the Sponsor's Fee.

To determine the Trust's NAV, the Trustee will subtract the amount of estimated accrued but unpaid fees computed by reference to the ANAV of the Trust and to the value of the gold held by the Trust from the ANAV of the Trust. The resulting figure is the NAV of the Trust. The Trustee will also determine the NAV per Share by dividing the NAV of the Trust by the number of the Shares outstanding as of the close of trading on the NYSE Arca (which includes the net number of any Shares created or redeemed on such evaluation day).

The Shares will be book-entry only and individual certificates will not be issued for the Shares.

Liquidity

The Shares may trade at, above or below the NAV per Share. The NAV per Share will fluctuate with changes in the market value of the Trust's assets. The trading price of the Shares will fluctuate in accordance with changes in the NAV per Share as well as market supply and demand. The amount of the discount or premium in the trading price relative to the NAV per Share may be influenced by non-concurrent trading hours between the NYSE Arca and the major gold markets. While the Shares will trade on the NYSE Arca until 8 p.m. New York time, liquidity in the market for gold will be reduced after the close of the major world gold markets, including London and the COMEX.[15] As a result, during this time, trading spreads, and the resulting premium or discount, on the Shares may widen.

Availability of Information Regarding Gold Prices

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity, such as gold, over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of gold price and gold market information available on public Web sites and through professional and subscription services.

Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers, such as Reuters and Bloomberg. Reuters and Bloomberg provide at no charge on their Web sites delayed information regarding the spot price of gold and last sale prices of gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on gold prices directly from market participants. An organization named EBS provides an electronic trading platform to institutions such as bullion banks and dealers for the trading of spot gold, as well as a feed of live streaming prices to Reuters and Moneyline Telerate subscribers. Complete real-time data for gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. The NYMEX also provides delayed futures and options information on current and past trading sessions and market news free of charge on its Web site. There are a variety of other public Web sites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers, such as The Wall Street Journal. In addition, the London a.m. Fix and London p.m. Fix are publicly available at no charge at *http://www.lbma.org.uk/statistics_current.htm* or *http://www.thebulliondesk.com*.

The Trust Web site will provide for the Shares an intraday indicative value (''IIV'') per Share, updated at least every 15 seconds, as calculated by the Exchange or a third party financial data provider during the Exchange's Core

[14] The Exchange, pursuant to NYSE Arca Equities Rule 7.12, has discretion to halt trading in the Shares if the London p.m. Fix is not determined or available for an extended time period based on extraordinary circumstances or market conditions.

[15] *See* e-mail from Tim Malinowski, Director, NYSE Euronext, to Christopher W. Chow, Special Counsel, Commission, dated May 7, 2009 (''E-mail'').

Trading Session (9:30 a.m. to 4 p.m., New York time).[16] The IIV will be calculated based on the amount of gold required for creations and redemptions and a price of gold derived from updated bids and offers indicative of the spot price of gold from gold dealer pricing.[17] The Trust Web site will also provide the Creation Basket Deposit and the NAV of the Trust as calculated each business day by the Sponsor. In addition, the Web site for the Trust will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price[18] at the close of trading in relation to the NAV as of the time the NAV is calculated (''Bid/Ask Price''), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The Web site for the Trust will also provide the Trust's prospectus, as well as the two most recent reports to stockholders. Finally, the Trust Web site will provide the last sale price of the Shares as traded in the US market. The Exchange will provide on its Web site (*http://www.nyx.com*) a link to the Trust's Web site. In addition, the Exchange will make available over the Consolidated Tape quotation information, trading volume, closing prices and NAV for the Shares from the previous day.

Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Equities Rule 8.201(e) for initial and continued listing of the Shares.

It is anticipated that a minimum of 100,000 Shares will be required to be outstanding at the start of trading. The minimum number of shares required to be outstanding is comparable to requirements that have been applied to previously listed shares of the streetTRACKS Gold Trust, the iShares COMEX Gold Trust, the iShares Silver Trust and exchange-traded funds. It is anticipated that the initial price of a Share will be approximately $90. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Fund subject to the Exchange's existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Equities Rule 7.34(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The minimum trading increment for Shares on the Exchange will be $0.01.

Further, NYSE Arca Equities Rule 8.201 sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Pursuant to NYSE Arca Equities Rule 8.201(h), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, related futures or options on futures, or any other related derivatives. NYSE Arca Equities Rule 8.201(i) prohibits an ETP Holder acting as a registered Market Maker in the Shares from using any material nonpublic information received from any person associated with an ETP Holder or employee of such person regarding trading by such person or employee in the underlying gold, related futures or options on futures or any other related derivative (including the Shares). In addition, NYSE Arca Equities Rule 8.201(g) prohibits an ETP Holder acting as a registered Market Maker in the Shares from being affiliated with a market maker in the underlying gold, related futures or options on futures or any other related derivative unless adequate information barriers are in place, as provided in NYSE Arca Equities Rule 7.26.

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder, as well as a subsidiary or affiliate of an ETP Holder that is in the securities business. A subsidiary or affiliate of an ETP Holder that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[19]

Surveillance

The Exchange intends to utilize its existing surveillance procedures applicable to derivative products (including Commodity-Based Trust Shares) to monitor trading in the Shares. The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. Also, pursuant to NYSE Arca Equities Rule 8.201(h), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold, gold futures contracts, options on gold futures, or any other gold derivative, through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. In addition, the Exchange may obtain trading information via the Intermarket Surveillance Group (''ISG'') from other exchanges who are members of the ISG.[20] Also, the Exchange has an Information Sharing Agreement with NYMEX for the purpose of sharing information in connection with trading in or related to COMEX gold futures contracts.

Information Bulletin

Prior to the commencement of trading, the Exchange will inform its ETP Holders in an Information Bulletin

[16] *See* E-mail, *supra* note 15.

[17] *See id*. The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

[18] The bid-ask price of the Trust is determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

[19] *See* NYSE Arca Equities Rule 7.12.

[20] A list of ISG members is available at *http://www.isgportal.org*. The Exchange notes that TOCOM is not an ISG member and the Exchange does not have in place a comprehensive surveillance sharing agreement with such market.

of the special characteristics and risks associated with trading the Shares. Specifically, the Information Bulletin will discuss the following: (1) The procedures for purchases and redemptions of Shares in Baskets (including noting that Shares are not individually redeemable); (2) NYSE Arca Equities Rule 9.2(a), which imposes a duty of due diligence on its ETP Holders to learn the essential facts relating to every customer prior to trading the Shares; (3) how information regarding the ITV is disseminated; (4) the requirement that ETP Holders deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; (5) the possibility that trading spreads and the resulting premium or discount on the Shares may widen as a result of reduced liquidity of gold trading during the Core and Late Trading Sessions after the close of the major world gold markets; and (6) trading information. For example, the Information Bulletin will advise ETP Holders, prior to the commencement of trading, of the prospectus delivery requirements applicable to the Trust. The Exchange notes that investors purchasing Shares directly from the Trust (by delivery of the Creation Basket Deposit) will receive a prospectus. ETP Holders purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

In addition, the Information Bulletin will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Bulletin will also reference the fact that there is no regulated source of last sale information regarding physical gold, that the Commission has no jurisdiction over the trading of gold as a physical commodity, and that the CFTC has regulatory jurisdiction over the trading of gold futures contracts and options on gold futures contracts.

The Information Bulletin will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) [21] of the Act, in general, and furthers the objectives of Section 6(b)(5),[22] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments and perfect the mechanisms of a free and open market and to protect investors and the public interest. The Exchange believes that the proposed rule change will facilitate the listing and trading of an additional type of commodity-based product that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca–2009–40 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the 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 publicly available. All submissions should refer to File Number SR–NYSEArca–2009–40 and should be submitted on or before June 5, 2009.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[23] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) [24] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest. The listing and trading of an additional type of commodity-based product should enhance competition among market participants and thereby benefit investors and the marketplace.

The Commission believes that the proposal to list and trade the Shares on the Exchange is consistent with Section 11A(a)(1)(C)(iii) of the Act,[25] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. The Exchange will make available, through the facilities of the CTA, the last sale price information for the Shares, quotation

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

[23] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[24] 15 U.S.C. 78f(b)(5).

[25] 15 U.S.C. 78k–1(a)(1)(C)(iii).

information, trading volume, closing prices and the NAV for the Shares from the previous day. The Web site for the Trust, which may be accessed through a link provided by the Exchange on its Web site, will disseminate the last-sale price information for Shares, NAV, and information related to the NAV, including the Bid-Ask Price, the Creation Basket Deposit, calculation information and data related to the premium or discount of the Bid-Ask Price against the NAV. The Web site for the Trust will also disseminate the IIV per Share, updated at least every 15 seconds, during the Exchange's Core Trading Session. Information on gold prices and markets is available on public Web sites and through professional and subscription services, and investors may obtain on a 24-hour basis gold pricing information based on the spot price of an ounce of gold from various financial information service providers. Complete real-time data for gold futures contracts and options prices traded on the COMEX is available by subscription from information services such as Reuters or Bloomberg, and information on gold is available from published or other public sources. NYMEX also provides delayed futures and options information free of charge.

Additionally, the Commission believes that the proposal to list and trade the Shares is reasonably designed to promote fair disclosure of information that may be necessary to price the Shares appropriately. As noted above, the Trust Web site will make available the NAV of the Trust as calculated each business day by the Trustee. In addition, NYSE Arca Equities Rule 8.201(i) provides that, in connection with trading in an underlying physical commodity, related commodity futures or options on commodity futures, or any other related commodity derivative, including Commodity-Based Trust Shares, an ETP Holder acting as a Market Maker (as defined in NYSE Arca Equities Rule 1.1(u)) in the Shares is restricted from using any material non-public information received from any person associated with such ETP Holder regarding trading by such person in the underlying physical commodity, related commodity futures or options on commodity futures, or other related commodity derivatives.

The Commission also believes that the Exchange's trading halt rules are reasonably designed to prevent trading in the Shares when transparency is impaired. NYSE Arca Equities Rule 8.201(e)(2) provides that, when the Exchange is the listing market, if the value of the underlying commodity or ITV (also known as the IIV) is no longer calculated or available on at least a 15-second delayed basis, the Exchange would consider suspending trading in the Shares. The Exchange has further represented that trading on the Exchange in the Shares may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule. NYSE Arca Equities Rule 8.201(e)(2) also provides that the Exchange may seek to delist the Shares in the event the value of the underlying gold or the ITV is no longer calculated or available as required.

The Commission further believes that the trading rules and procedures to which the Shares will be subject pursuant to this proposal are consistent with the Act. The Exchange has represented that any securities listed pursuant to this proposal will be deemed equity securities, and subject to existing Exchange rules governing the trading of equity securities.

In support of this proposal, the Exchange has made representations, including:

(1) The Exchange's surveillance procedures are adequate to deter and detect violations of Exchange rules and applicable federal securities laws.

(2) The Exchange will distribute an Information Bulletin, the contents of which are more fully described above, to ETP Holders in connection with the trading of the Shares.

This approval order is based on the Exchange's representations.

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[26] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. The Exchange's proposal to list and trade the Shares does not present any novel or significant regulatory issues. Previously, the Commission approved two proposals by the Exchange to list and trade shares of trusts that hold gold bullion pursuant to NYSE Arca Equities Rule 8.201.[27]

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NYSEArca–2009–40) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11397 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

[26] 15 U.S.C. 78s(b)(2).

[27] *See* Securities Exchange Act Release Nos. 56041 (July 11, 2007), 72 FR 39114 (July 17, 2007) (SR–NYSEArca–2007–43) (approving listing and trading of shares of the iShares COMEX Gold Trust) and 56224 (August 8, 2007), 72 FR 45850 (August 15, 2007) (SR–NYSEArca–2007–76) (approving listing and trading of shares of the streetTRACKS Gold Trust).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59894; File No. SR–BX–2009–023]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Temporarily Implement a Cap on Certain Fees for Members

May 8, 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 May 1, 2009, NASDAQ OMX BX, Inc. (''BX'' 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 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

BX proposes to adopt a temporary cap on fees charged for OUCH ports to the Equities Market. The text of the proposed rule change is below. Proposed new language is in italics.[3]

* * * * *

7015. Access Services.

The following charges are assessed by the Exchange for ports to establish connectivity to the NASDAQ OMX BX Equities Market, as well as ports to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic manual of Nasdaq found at *http://nasdaqomxbx.cchwallstreet.com.*

receive data from the NASDAQ OMX BX Equities Market:

- $400 per month for each port pair, other than Multicast ITCH® data feed pairs, for which the fee is $1000 per month. *Additional OUCH port pairs beyond 15 are at no cost for the months of May and June 2009.*
- Internet Ports: An additional $200 per month for each Internet port that requires additional bandwidth.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX 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

BX is proposing to modify its pricing for OUCH ports, which provide connectivity to the NASDAQ OMX BX Equities Market. Specifically, BX will eliminate fees for a member firm's OUCH ports in excess of 15 for the months of May and June 2009. Member firms have complained that, because BX does not have an anti-internalization capability, they must purchase additional OUCH ports that they would otherwise not need to purchase solely to avoid unwanted execution against their customer orders. Internalization occurs when a member firm's customer order is posted on the market and executed all or in part by the same member firm. Member firms must avoid internalization of certain customer orders to avoid violating rules and regulations of the Employee Retirement Income Security Act that preclude and/or limit managing broker-dealers of such customer accounts from trading as principal with orders generated for those accounts. Currently, some member firms are only able to avoid internalization by purchasing additional OUCH ports through which they place all order flow that must not be internalized. Such additional ports have discrete MPID numbers, which allow these member firms to identify the orders and avoid internalization.

BX is developing an anti-internalization function for its market designed to prevent member firms from executing a trade as a counterparty to their customer orders, which it anticipates will be operational by the end of June. The temporary cap on OUCH port fees proposed herein is designed to provide relief to member firms affected by BX's lack of an anti-internalization function until it can be implemented, at which time such firms can reduce the number of ports currently subscribed to solely due to the lack of such a function. BX will seek to remove the cap language from the rule upon its expiration or alternatively will seek to extend the cap until such time the anti-internalization function can be implemented.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Section 6(b)(4) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls. The proposed fee change applies uniformly to all BX members. BX has determined that temporarily instituting a cap on fees for OUCH ports in excess of 15 will provide relief to member firms required to purchase additional ports solely due to BX's lack of an anti-internalization function.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange 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, as amended.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules.sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–023 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–BX–2009–023. 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 business days between the hours of 10 a.m. and 3 p.m., located at 100 F Street, NE., Washington, DC 20549. 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

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(a)(ii).

[7] 17 CFR 240.19b–4(f)(2).

Number SR–BX–2009–023 and should be submitted on or before June 5, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11359 Filed 5–14–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before June 15, 2009.

Address Comments to: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://fdms.gov.*

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 8, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

NEW SPECIAL PERMITS

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14838–N		Autoliv ASP, Inc., Ogden, UT.	49 CFR 172.320, 173.56 and 173.62.	To authorize the transportation in commerce of Class 1 explosives in a specially designed packaging as Division 1.3C or 1.4C for materials and devices respectively without being first examined as required by § 173.56 for transportation by motor vehicle. (mode 1).
14839–N		Matheson Tri-Gas Inc., Basking Ridge, NJ.	49 CFR, 180.209	To authorize the transportation in commerce of certain DOT Specification 3A and 3AA cylinders containing Division 2.2 gases that have tested every 15 years instead of every 10 years. (modes 1, 2, 3, 4, 5).
14841–N		Innophos, Inc., Nashville, TN.	49 CFR, 177.834(i)(3).	To authorize the use of video cameras and monitors to observe the loading and unloading operations meeting the definition of ''loading incidental to movement'' or ''unloading incidental to movement'' as those terms are defined in § 171.8 of the Hazardous Materials Regulations from a remote control station in place of personnel remaining within 25 feet of the cargo tank motor vehicles. (mode 1).
14842–N		American Spraytech, North Branch, NJ.	49 CFR, 173.306(a)(3)(v).	To authorize the transportation in commerce of certain aerosols containing a Division 2.2 compressed gas in certain non-refillable aerosol containers which are not subject to the hot water bath test. (mode 1).
14843–N		Mercotac, Inc., Carlsbad, CA.	49 CFR, 173.162(c) and 172.200.	To authorize the transportation of gallium containing in a manufactured article in alternative packaging, and without shipping papers unless transported by air. (modes 1, 2, 4, 5).
14844–N		Northern Air Cargo, Anchorage, AK.	49 CFR, 173.302(f)	To authorize the transportation in commerce of cylinders of compressed oxygen and oxidizing gases without rigid outer packaging when no other means of transportation exist. (modes 4, 5).
14847–N		PPG Industries, Inc., Monroeville, PA.	49 CFR, 179.15(e)	To authorize the transportation in commerce of certain DOT 105J500W tank cars containing chlorine with a higher start-to-discharge pressure setting than is currently authorized. (mode 2).
14848–N		Corning Incorporated, Corning, NY.	49 CFR, 177.834(h)	To authorize the discharge of a Division 2.1 material from an authorized DOT specification cylinder without removing the cylinder from the vehicle on which it is transported. (mode 1).
14849–N		Rechargeable Battery Recycling Corporation, Atlanta, GA.	49 CFR, 172.200, 172.300, 172.400.	To authorize the transportation in commerce of certain lithium batteries without shipping papers, marking or labeling, when transported for disposal. (mode 1).

[8] 17 CFR 200.30–3(a)(12).

NEW SPECIAL PERMITS—Continued

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
14851–N		Alaska Air Group, Inc., Seattle, WA.	49 CFR, 175.8	To authorize the carriage and use of up to two cans of aerosol whipped cream in the passenger cabin of an aircraft under the exceptions for operator equipment. (mode 5).
14852–N		NASA Kennedy Space Center, FL.	49 CFR, 173.304a and 173.226.	To authorize the transportation in commerce of Ammonia, anhydrous and Toxic liquid n.o.s. in alternative packaging contained in the Protein Diagnostics Crystallization Facility unit as part of the payload for a shuttle launch. (modes 1, 4).

[FR Doc. E9–11309 Filed 5–14–09; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of applications for modification of special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportations Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g., to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before June 1, 2009.

Address Comments To: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://fdms.gov.*

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 7, 2009.

Delmer F. Billings,

Director, Office of Hazardous Materials Special Permits and Approvals.

MODIFICATION SPECIAL PERMITS

Application docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
14453–M	FIBA Technologies, Inc. Millbury, MA.	49 CFR 180.209	To renew and modify the special permit to authorize an additional Division 2.1 hazardous material; to increase maximum acceptance flaw size used on UE requalification and other miscellaneous revisions.
14503–M	Gay Lea Foods Co-operative Limited Guelph.	49 CFR 173.306(b)(1)	To modify the special permit to authorize the addition of DOT 2Q metal container.
14576–M	Structural Composites Industries (SCI) Pomona, CA.	49 CFR 173.302a and 173.304a.	To modify the special permit to authorize the removal of the specific requirement for minimum water volume of 250 liters.

[FR Doc. E9–11310 Filed 5–14–09; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: St. John the Baptist and St. James Parishes, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Environmental Impact Statement (EIS) will be prepared for the proposed enhanced commercial interstate access in St. John the Baptist Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. Carl M. Highsmith, Project Delivery Team Leader, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 757–7600; Ms. Noel Ardoin, Environmental Administrator, Louisiana Department of Transportation and Development, 1201 Capitol Access Road (P.O. Box 94245), Baton Rouge, LA 70802, Telephone: (225) 242–4501; or Ms. Rebecca Otte, Environmental Planner, Regional Planning Commission, 1340 Poydras, Suite 2100, New Orleans, LA 70112, Telephone: (504) 568–6622.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the

Regional Planning Commission for Jefferson, Orleans, Plaquemines, St. Bernard, and St. Tammany Parishes (RPC), and in conjunction with the Louisiana Department of Transportation and Development (LADOTD), will prepare an EIS on alternatives for enhanced commercial interstate access for the Port of South Louisiana and St. John the Baptist Parish between Airline Highway (U.S. 61) and Interstate 10. While port facilities exist along a 54-mile stretch of the Mississippi River, the main focus of port activities and need for port access has been focused in the Reserve area. Reserve has no direct connection to the interstate system. Interchanges with I–10, the nearest interstate highway, lie either eight miles to the east at Highway 3188 or twelve miles to the west at Highway 641. Access to I–10 from the port facilities at Reserve via either of these routes is rather cumbersome, using one of three state highways to access U.S. 61, then traveling either west or east along this congested commercial thoroughfare to the state highways linking to I–10. The routes also pass through residential areas. The proposed EIS will explore not only enhanced I–10 access for the Port of South Louisiana, but also enhanced access for general commercial and non-commercial traffic in the Parish.

The study area limits of the EIS extend from ¼ mile to the east of U.S. 51 on the east to ¼ mile to the west of LA 3213/641 on the west, and from ¼ mile north of I–10 on the north to ¼ mile south of U.S. 61 on the south. It is anticipated that alternatives explored may include new roadways, possible new interchanges with I–10, improvements to existing roadways, as well as Transportation System Management (TSM) options. No transit alternatives are envisioned at this time.

Major arterials that may be traversed, incorporated into, or considered within this study area include: Interstate 10, Interstate 55, U.S. 61, U.S. 51, LA 3213, LA 641, LA 3188, LA 637, LA 54, LA 3179, LA 3223, and LA 3224.

The EIS will be initiated with a scoping process. The scoping process will include a program of public outreach and agency coordination which will be conducted over the next several months in order to elicit input on project purpose and need, potential alternatives, significant and insignificant issues, and collaborative methods for analyzing transportation alternatives and environmental impacts.

As part of scoping, RPC and LADOTD will hold a public scoping meeting and will contact and meet with local, State, and Federal agencies and officials as well as private individuals and organizations concerned with the project. Public notice will be given of the time and place of the public scoping meeting and hearing. The information gained during the scoping process will be widely disseminated and used to guide the development of the EIS. All comments and input received during the scoping will be considered and documented.

Beginning with scoping, continuous and regular public involvement and agency coordination will continue throughout the preparation of the EIS. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, tribes, elected officials and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Numerous public meetings will be held throughout the term of the project. In addition, a public hearing will be held after the draft EIS is made available for public review. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the LADOTD at the address provided above.

Issued on May 8, 2009.

Charles W. Bolinger,

Division Administrator, FHWA.

[FR Doc. E9–11371 Filed 5–14–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) issues.

DATES: The meeting is scheduled for Thursday, June 11, 2009, starting at 9 a.m. Pacific Daylight Time. Arrange for oral presentations by June 1, 2009.

ADDRESSES: FAA-Northwest Mountain Region Office, Transport Standards Staff conference room, 1601 Lind Ave., SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3168, FAX (202) 267–5075, or e-mail at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held June 11, 2009.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes
- FAA Report
- Airplane-level Safety Analysis WG Report
- Task 4 Status
- EXCOM Report
- Transport Canada Report
- Ice Protection HWG Report
- Vote on final report
- Airworthiness Assurance HWG Report
- Avionics HWG Report
- Any Other Business
- Action Item Review

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed in the **FOR FURTHER INFORMATION CONTACT** section no later than June 1, 2009. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

To participate by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for the teleconference call-in number and passcode. Anyone calling from outside the Renton, WA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by June 1, 2009, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please

contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on May 12, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

[FR Doc. E9–11409 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2009–17]

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.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 4, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2009–0233 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Ralen Gao (202) 267–3168, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on May 12, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2009–0233.

Petitioner: Skywagon Corporation.

Section of 14 CFR Affected: 14 CFR 119.3.

Description of Relief Sought: Skywagon Corporation (Skywagon) seeks relief from § 119.3 to allow Skywagon to operate its Douglas DC–4 airplanes in on-demand operations with a maximum payload of greater than 7,500 pounds under part 135.

[FR Doc. E9–11363 Filed 5–14–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2009.

The Department of the Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 15, 2009 to be assured of consideration.

Financial Crimes Enforcement Network (FinCEN)

OMB Number: 1506–0035.

Type of Review: Extension.

Title: Anti-Money Laundering Programs for Insurance Companies.

Description: Insurance companies are required to establish and maintain a written anti-money laundering program. A copy of the written program must be maintained for five years. See 31 CFR 103.137.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 1,200 hours.

OMB Number: 1506–0030.

Type of Review: Extension.

Title: Anti-Money Laundering Programs for Dealers in Precious Metals, Precious Stones, or Jewels.

Description: Dealers in precious metals, stones, or jewels are required to establish and maintain a written anti-money laundering program. A copy of the written program must be maintain for five years. See 31 CFR 103.140.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 20,000 hours.

OMB Number: 1506–0020.

Type of Review: Extension.

Title: Anti-Money Laundering Programs for Money Services Businesses, Mutual Funds, and Operators of Credit Card Systems.

Description: Money services businesses, mutual funds, and operators of credit card systems are required to develop and implement written anti-money laundering program. A copy of the program must be maintained for five years. See 31 CFR 103.125, 103.130, and 103.135.

Respondents: Businesses or other for-profits.

Estimated Total Reporting Burden: 203,006 hours.

Clearance Officer: Russell Stephenson, (202) 354–6012, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New

Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–11417 Filed 5–14–09; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 12, 2009.

The Department of Treasury will submit the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the publication date of this notice. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 15, 2009 to be assured of consideration.

Bureau of Public Debt (BPD)

OMB Number: 1535–0136.

Type of Review: Revision.

Title: Application for Refund of Purchase Price of United States Savings Bonds for Organizations.

Forms: PD F 5410.

Description: Used by an organization to request refund or purchase of United States Savings Bonds.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1535–0055.

Type of Review: Revision.

Title: Creditors request for payment of Treasury Securities belonging to a decedent's estate being settled without administration.

Forms: PD F 1050.

Description: Used to obtain creditor's consent to dispose of securities of a deceased owner's estate without administration.

Respondents: Businesses or other for-profits.

Estimated Total Burden Hours: 150 hours.

OMB Number: 1535–0084.

Type of Review: Extension.

Title: Order for Series I/EE U.S. Savings Bonds and Order for Series I/EE U.S. Savings Bonds in name of fiduciary.

Forms: PD F 5263–1, PD F 5263, PD F 5374, PD F 5374–1.

Description: Completed by the purchaser to issue U.S. Savings Bonds.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 830,000 hours.

OMB Number: 1535–0118.

Type of Review: Revision.

Title: Disposition of Securities Belonging to a Decedent's Estate Being Settled Without Administration.

Forms: PD F 5336.

Description: Used by person(s) entitled to a decedent's estate not being administered to request disposition of securities and/or related payments.

Respondents: Individuals or Households.

Estimated Total Burden Hours: 12,675 hours.

Clearance Officer: Judi Owens, (304) 480–8150, Bureau of the Public Debt, 200 Third Street, Parkersburg, West Virginia 26106.

OMB Reviewer: Shagufta Ahmed, (202) 395–7873, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Celina Elphage,

Treasury PRA Clearance Officer.

[FR Doc. E9–11418 Filed 5–14–09; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Privacy Act of 1974: Systems of Records

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice of systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, Financial Management Service is publishing its inventory of Privacy Act systems of records.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a) and the Office of Management and Budget (OMB) Circular No. A–130, Financial Management Service (FMS) has completed a review of its Privacy Act systems of records notices to identify minor changes to those notices. FMS' Privacy Act systems of records were last published on June 14, 2005 at 70 FR 34522–34535.

The following system of records was added to FMS' inventory of Privacy Act notices since June 14, 2005: FMS.006—Direct Deposit Enrolment Records, published October 12, 2005 at 70 FR 59395.

On May 22, 2007, the Office of Management and Budget (OMB) issued Memorandum M–07–16 entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information.'' It required agencies to publish the routine use recommended by the President's Identity Theft Task Force. As part of that effort, the Department published the notice of the proposed routine use on October 3, 2007, at 72 FR 56434, and it was effective on November 13, 2007. The new routine use has been added to each FMS system of records below.

The systems notices are reprinted in their entirety following the Table of Contents.

Systems Covered by This Notice

This notice covers all systems of records adopted by FMS up to August 1, 2008. The systems notices are reprinted in their entirety following the Table of Contents.

Dated: May 12, 2009.

Elizabeth Cuffe,

Deputy Assistant Secretary Privacy and Treasury Records.

Financial Management Service (FMS)

Table of Contents

FMS.001—Administrative Records.
FMS.002—Payment Issue Records for Regular Recurring Benefit Payments.
FMS.003—Claims and Inquiry Records on Treasury Checks, and International Claimants.
FMS.004—Education and Training Records.
FMS.005—FMS Personnel Records.
FMS.006—Direct Deposit Enrollment Records.
FMS.007—Payroll and Pay Administration.
FMS.010—Records of Accountable Officers' Authority With Treasury.
FMS.012—Pre-complaint Counseling and Complaint Activities.
FMS.013—Gifts to the United States.
FMS.014—Debt Collection Operations System.
FMS.016—Payment Records for Other Than Regular Recurring Benefit Payments.
FMS.017—Collections Records.

TREASURY/FMS.001

SYSTEM NAME:

Administrative Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Room 144, Hyattsville, MD 20782. Also, please see Appendix I.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Financial Management Service personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Motor Vehicle Accident Reports; (2) Parking Permits; (3) Distribution list of individuals requesting various Treasury publications; (4) Treasury Credentials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301.

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

These records may be used to:

(1) Disclose to GSA for driver's permits, parking permits, accident reports, and credentials;

(2) Disclose to GPO for servicing public on Treasury publications;

(3) Disclose to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

By name and by Treasury publication.

SAFEGUARDS:

Locked containers.

Administrative Procedure—names are not given to anyone except those who control the listing.

RETENTION AND DISPOSAL:

(1) Distribution List [printed materials]—destroy one year after the end of the fiscal year during which the records were created.

(2) Motor Vehicle Accident Reports—destroy six years after the end of the fiscal year during which the records were created.

(3) Treasury Credentials—destroy in accordance with National Archives and Records Administration General Records Schedule 11, item 4.

(4) Parking Permits—destroy two years after the end of the fiscal year during which the records were created.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Facilities Management Division, Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Room 144, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be sent to the Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Financial Management Service personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Appendix I to FMS.001

- Motor Vehicle Accident Reports: Prince George's Metro Center II, 3700 East-West Highway, Room 127, Hyattsville, MD 20782.
- Parking Permits: 1. Prince George's Metro Center II, 3700 East-West Highway, Room 127, Hyattsville, MD 20782. 2. Liberty Center Building, 401 14th Street, SW., Room 118, Washington, DC 20227.
- Distribution List: Prince George's Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.
- Treasury Credentials: Prince George's Metro Center II, 3700 East-West Highway, Room 158–B, Hyattsville, MD 20782.

TREASURY/FMS.002

SYSTEM NAME:

Payment Issue Records for Regular Recurring Benefit Payments—Treasury/Financial Management Service.

SYSTEM LOCATION:

The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227 and Hyattsville, MD 20782. Records maintained at Financial Centers in five regions: Austin, TX; Birmingham, AL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Beneficiaries of Title II of the Social Security Act.

(2) Beneficiaries of Title XVI of the Social Security Act.

(3) Beneficiaries of the Civil Service Retirement System.

(4) Beneficiaries of the Railroad Retirement System.

(5) Beneficiaries of the Department of Veterans Affairs.

(6) Holders of Series H and HH Bonds (interest payment).

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment issue records for regular recurring benefit payments showing name, check number and symbol, or other identification, address, account number, payment amount, and date of issuance for each of the categories of individuals listed above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

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

These records may be used to:

(1) Disclose to banking industry for payment verification;

(2) Disclose to Federal investigative agencies, Departments and agencies for whom payments are made, and payees;

(3) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(4) Disclose information to a Federal, State, or local agency maintaining civil,

criminal or other relevant enforcement information or other pertinent information, which has requested information relevant or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information to a court, magistrate, or administrative tribunal of competent jurisdiction;

(6) Disclose information to foreign governments in accordance with formal or informal international agreements;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(11) Disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose;

(12) Disclose information to any State, Territory or Commonwealth of the United States, or the District of Columbia to assist in the collection of State, Commonwealth, Territory or District of Columbia claims pursuant to a reciprocal agreement between FMS and the State, Commonwealth, Territory or the District of Columbia;

(13) Disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools;

(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services, subject to the same limitations applicable to FMS officers and employees under the Privacy Act;

(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act; and

(16) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

By account number.

SAFEGUARDS:

Computer password system, card-key entry system, limited to authorized personnel.

RETENTION AND DISPOSAL:

Disposal is not authorized at this time.[1]

SYSTEM MANAGER(S) AND ADDRESS:

Chief Disbursing Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR, part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Voucher certifications by Departments and agencies for whom payments are made.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.003

SYSTEM NAME:

Claims and Inquiry Records on Treasury Checks, and International Claimants—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Room 727D, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

(1) Payees and holders of Treasury checks, (2) Claimants awarded benefits under the War Claims Act and the International Claims Settlement Act of 1949.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Treasury check claim file: Treasury check, claim of payee with name and address, settlement action taken.

(2) Awards for claims for losses sustained by individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; (1) For Treasury check claims—31 U.S.C. 71 with delegation of authority from Comptroller General of the United States; (2) International claims—50 U.S.C. 2012; 22 U.S.C. 1627, 1641, 1642.

[1] FMS has submitted a records schedule to the National Archives and Records Administration (NARA) with a proposed retention period of seven years. Until NARA approves the proposed records schedule, disposal is not authorized.

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

(a) Information is routinely disclosed to endorsers concerning checks for which there is liability, Federal agencies, State and local law enforcement agencies, General Accounting Office, Congressional offices and media assistance offices on behalf of payee claimants.

(b) International Claims—Information in files is used by claimants (awardees) and their representatives, Foreign Claims Settlement Commission, and Congressmen. These records and information in the records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal of competent jurisdiction;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(9) Disclose information to the public when attempts by FMS to locate the claimant have been unsuccessful. This information is limited to the claimant's name and city and state of last known address, and the amount owed to the claimant. (This routine use does not apply to the Iran Claims Program or the Holocaust Survivors Claims Program or other claims programs that statutorily prohibit disclosure of claimant information); and

(10) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

(1) Name of payee and check number and symbol.

(2) Alpha cross-reference to case number.

(3) Name of claimant or alpha reference to claim number.

SAFEGUARDS:

(1) Secured building.

(2) Secured files in secured building.

RETENTION AND DISPOSAL:

Disposal of electronic Treasury check claims records is not authorized at this time.[2] Hardcopy international claims records are scheduled to be destroyed 10 years after the end of the fiscal year in which the case was closed.

SYSTEM MANAGER(S) AND ADDRESS:

Category 1: Director, Financial Processing Division, Prince George's Metro Center II, 3700 East-West Highway, Room 727D, Hyattsville, MD 20782. Category 2: Director, Funds Management Division, Prince George's Metro Center II, 3700 East-West Highway, Room 620D, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system managers will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to: Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, 401 14th Street, SW., Washington, DC 20227. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR Part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

(1) Individual payees of Treasury checks, endorsers of Treasury checks, investigative agencies, contesting claimants.

(2) Awards certified to Treasury for payment by Foreign Claims Settlement Commission.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.004

SYSTEM NAME:

Education and Training Records—Treasury/FMS.

SYSTEM LOCATION:

Washington, DC 20227; Financial Management Service, U.S. Department of the Treasury, 1990 K Street, NW., Suite 300, Washington, DC 20006.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Government employees (including separated employees, in certain cases) and other individuals who access and apply for FMS training services.

[2] FMS has submitted a records schedule to the National Archives and Records Administration (NARA) with a proposed retention period of seven years for most electronic Treasury check claims records, and a proposed retention period of 20 years for certain trust-fund-related records. Until NARA approves the proposed records schedule, disposal is not authorized.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Personal Profile—Account Record;
(2) Transcript Record;
(3) Enrollment Status Record;
(4) Job Skills Record;
(5) Individual Development Plan Record;
(6) Assessment Performance Results Record;
(7) Managerial Approval/Disapproval Status Record;
(8) Class Roster Record;
(9) Certificate—Training Program Status Record;
(10) Class Evaluation Record;
(11) Payment Record;
(12) Statistical Reports—retrievable by names: (a) Personnel Transcript Report, (b) Class Enrollment Report, (c) Class Payment/Billing Report, (d) Status of Training Report, (e) Ad hoc Training Report, and (f) Other similar files or registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720.

PURPOSE(S):

The purpose of this system is to maintain records about Government employees and other individuals who participate in FMS' education and training program. The information contained in the records will assist FMS in properly tracking individual training and accurately account for training revenue and expenditures generated through the FMS' training programs (for example, Learning Management System (LMS)). For FMS personnel, the records contained in FMS' training records will also assist managers' active participation in their employees' learning plans. FMS maintains the information necessary to ensure that FMS keeps accurate records related to classes, including a training participant's training and enrollment status, class completion information, transcripts and certificates of accomplishment. FMS also maintains the records to ensure that financial records pertaining to a training participant's payment for training fees are maintained accurately. FMS' training records will serve to report receipts to the appropriate Federal agency (currently the Treasury Department's Bureau of Public Debt) responsible for maintaining FMS' financial records for training. Finally, the information contained in the covered records will be used for collateral purposes related to the training processes, such as the collection of statistical information on training programs, development of computer systems, investigation of unauthorized or fraudulent activity related to submission of information to FMS for training program purposes and the collection of debts arising out of such activity.

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

These records may be used to disclose information to:

(1) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Federal agencies, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, testing and enhancing related computer systems, creating and reviewing statistics to improve the quality of services provided, or conducting debt collection services;

(5) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected as well as status of their personnel training, statistical training information;

(6) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction;

(7) Unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(8) Foreign governments in accordance with formal or informal international agreements and if they maintain proper administrative or financial controls related to the training activity;

(9) Third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(10) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt when the debt arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose;

(11) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; and

(12) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

Electronic training data (can be retrieved by Class Name and/or Organization Name and Participant Name. Electronic financial data can be retrieved by Name, Organization and payment information (Credit Card, Form 182, DD Form 1556, for example).

SAFEGUARDS:

All hardcopy records are maintained in a secured building, secured room, and locked cabinets. FMS personnel access to training data is primarily for the purpose of using the training

services or administering the LMS. For technical and administrative purposes, non-FMS personnel access is limited to contractors who are maintaining the LMS system in the normal performance of their duties and have completed non-disclosure statements and undergone security background checks consistent with their access in accordance with the existing contract.

RETENTION AND DISPOSAL:

Retention periods vary by record type, up to a maximum of 7 years after last training activity.

SYSTEM MANAGER AND ADDRESS:

Assistant Commissioner, Management, Human Resources Division, Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record Access Procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by: The individual on whom the record is maintained; the individual's employer, other governmental agency or educational institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.005

SYSTEM NAME:

FMS Personnel Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, 401 14th St., SW., Washington, DC 20227; Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Government employees (including separated employees, in certain cases) and applicants.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Locator Cards.
(2) Incentive Awards Record.
(3) Official Personnel Folder.
(4) Personnel Roster.
(5) Logs of SF–52's.
(6) Correspondence File.
(7) Position Listings.
(8) Position Descriptions with Evaluation Statements.
(9) Personnel Management Evaluation Survey Reports.
(10) Request for Certification File.
(11) Merit Promotion File.
(12) Exit Interview File.
(13) Performance File.
(14) Statistical Reports—retrievable by names: (a) Personnel Status Report, (b) Ad Hoc Retiree Report, (c) Monthly EEO report, (d) Direct Hire Authority Report, (e) Registers Worked File, (f) Statements of Employment and Financial Interest, and (g) Other similar files or registers.
(15) Training Course Nominations.
(16) Evaluation of Training Program.
(17) Tuition Assistance Files.
(18) Senior Executive Service Development File.
(19) Management Development File.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10561, dated September 13, 1954, Federal Personnel Manual, and Title 5 of U.S.C. Code.

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

These records may be used to:

(1) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(2) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(3) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(4) Disclose information to foreign governments in accordance with formal or informal international agreements;

(5) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(6) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(7) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(8) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(9) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

Alphabetically by name; also in some instances by organization, then Social Security number.

SAFEGUARDS:

Secured building, secured room, and locked cabinets. Non-FMS access is limited to investigators from OPM, etc., members of Fair Employment staff and Union officials.

RETENTION AND DISPOSAL:

Delete/destroy in accordance with National Archives and Records Administration General Records Schedule 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Division, Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Room 115–F, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Applicant Personnel Action Forms (SF–50), SF–171 (completed by applicant), Payroll Actions References, Educational Institutions, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.006

SYSTEM NAME:

Direct Deposit Enrollment Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located at the Federal Reserve Bank, acting in its capacity as Treasury's fiscal agent, 2200 North Pearl Street, Dallas, Texas 75201.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who enroll with the FMS to receive Federal payments from the Federal Government via an electronic funds transfer program known as ''Direct Deposit.''

CATEGORIES OF RECORDS IN THE SYSTEM:

The records may contain identifying information, such as an individual's name(s), social security number, home address, home and work telephone number, and personal e-mail address (home and work); information about an individual's bank account(s) and other types of accounts to which payments are made, such as the individual's bank account number and the financial institution routing and transit number; information about an individual's payments received from the United States, including the type of payment received and the Federal agency responsible for authorizing the payment.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3332.

PURPOSE(S):

The purpose of this system is to maintain records about individuals who wish to enroll in the Direct Deposit program in order to receive Federal payments directly to a bank account or other similar type of account via electronic funds transfer, rather than by paper check. The records are used to process Direct Deposit enrollment applications that may be received directly by FMS, its fiscal agents, and/or contractors. The records are collected and maintained to guarantee that Direct Deposit enrollment applications are processed properly to ensure that a recipient's Federal payment will be disbursed to the correct account. Without the appropriate information, FMS, its fiscal agents and contractors, would not be able to process the Direct Deposit enrollment application as requested by the individual authorizing the Direct Deposit. The information will also be used for collateral purposes related to the processing of Direct Deposit enrollments, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity, and the collection of debts arising out of such activity.

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

These records may be used to disclose information to:

(1) Appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of a potential violation of civil or criminal law or regulation;

(2) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Fiscal agents, financial agents, financial institutions, and contractors for the purpose of processing Direct Deposit enrollment applications, including, but not limited to, processing Direct Deposit enrollment forms and implementing programs related to Direct Deposit; investigating and rectifying possible erroneous information; creating and reviewing statistics to improve the quality of services provided; conducting debt collection services for debts arising from Direct Deposit activities; or developing, testing and enhancing computer systems;

(5) Federal agencies, their agents and contractors for the purposes of facilitating the processing of Direct Deposit enrollment applications and the implementation of programs related to Direct Deposit;

(6) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt for the purpose of garnishing wages, only when the debt arises from the unauthorized or improper use of the Direct Deposit program. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any

other authorized debt collection purpose;

(7) Financial institutions, including banks and credit unions, for the purpose of disbursing payments and/or investigating the accuracy of information required to complete transactions using Direct Deposit and for administrative purposes, such as resolving questions about a transaction;

(8) Representatives of the National Archives and Records Administration (NARA) who are conducting records management inspections under authority of 44 U.S.C. 2904 and 2906; and

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor when the debt arises from the unauthorized use of Direct Deposit is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

Records are retrieved by name, social security number, telephone number, transaction identification number, or other alpha/numeric identifying information.

SAFEGUARDS:

All official access to the system of records is on a need-to-know basis only, as authorized by a business line manager at FMS or FMS's fiscal agent. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Each user of computer systems containing records has individual passwords (as opposed to group passwords) for which he or she is responsible. Thus, a security manager can identify access to the records by user. Access to computerized records is limited, through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, badge access, and locked doors with key entry.

RETENTION AND DISPOSAL:

Electronic and paper records for enrollments and associated transactions will be retained for six (6) months or as otherwise required by statute or court order. Records in electronic media are electronically erased using industry-accepted techniques, and in accordance with applicable Financial Management Service policies regarding the retention and disposal of fiscal agency records. Paper records are destroyed in accordance with fiscal agency archive and disposal procedures and applicable Financial Management Service policies regarding the retention and disposal of fiscal agency records.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Payment Management, EFT Strategy Division, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained (or by his or her authorized representative), other persons who electronically authorize payments from the Federal government, Federal agencies responsible for authorizing payments, Federal agencies responsible for disbursing payments, and Treasury fiscal agents that process Direct Deposit enrollment applications, and contractors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.007

SYSTEM NAME:

Payroll and Pay Administration—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Room 133 and 101A, Hyattsville, MD 20782; and Room 120, Liberty Center Building, Washington, DC 20227.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All employees of the Service and separated employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Official Payroll Folder (a) Levy and Garnishment Records. (b) SF–1192—Savings Bond Authorization. (c) SF–1199A—Allotment of Pay to Savings Account. (d) Copies of SF–50—Notification of Personnel Action. (e) Withholding Tax Exemptions. (f) Copy of Health Benefit Designation. (g) Copy of Life Insurance Forms. (h) Payroll Change Slips. (i) Combined Federal Campaign Designations. (j) Copy of SF–1150. (2) Time and Attendance Reports (a) SF–71 Request for Leave. (b) Court Leave Documents. (c) Request for Advancement of Leave. (3) Payroll Comprehensive Listing (a) Current Payment Information. (b) Record of Leave Earned and Used. (c) All Deductions from Pay. (d) Personnel Information such as Grade, Step, Salary, Title, Date of Birth, Social Security Number, Veterans Preference, Tenure, etc. (4) Payroll Control Registers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 5—Pay, Leave and Allowances.

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

These records may be used to disclose information:

(1) To Federal Agencies and to State and Local Agencies for tax purposes; and

(2) To appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic/Microform.

RETRIEVABILITY:

By Social Security Number.

SAFEGUARDS:

Secured building, secured room and locked cabinets.

RETENTION AND DISPOSAL:

Dispose of in accordance with National Archives and Records Administration General Records Schedule 2.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Personnel Management Division, Financial Management Service, Prince George's Metro Center II, 3700 East-West Highway, Room 115–F, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR Part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

From individual Service employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.010

SYSTEM NAME:

Delegations and Designations of Authority for Disbursing Functions—Treasury/Financial Management Service.

SYSTEM LOCATION:

Kansas City Regional Financial Center (KFC), Financial Management Service, Department of the Treasury, 4241 NE. 34th Street, Kansas City, MO 64117.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Heads of Agencies, Certifying Officers, Designated Agents, and other Federal employees designated to perform specific disbursement-related functions.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records are maintained on the designation or removal of individuals to act in a specified capacity pursuant to a proper authorization.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

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

These records may be used to:

(1) Disclose to banking institutions, Federal Reserve Banks, and Government agencies for verification of information on authority of individuals to determine propriety of actions taken by such individuals;

(2) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(3) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(4) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(5) Disclose information to foreign governments in accordance with formal or informal international agreements;

(6) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(7) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(8) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(9) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation; and

(10) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or

confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic

RETRIEVABILITY:

By name.

SAFEGUARDS:

Access to computerized records is limited through use of access codes, encryption techniques, and/or other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, badge access, locked doors and locked cabinets.

RETENTION AND DISPOSAL:

Hardcopy records—destroy three years after authority is revoked. Electronic records—disposal is not authorized at this time.[3]

SYSTEM MANAGER(S) AND ADDRESS:

Director, Kansas City Regional Financial Center (KFC), Financial Management Service, Department of the Treasury, 4241 NE. 34th Street, Kansas City, MO 64117.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th St., SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system managers will advise as to whether the Service maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

[3] FMS must submit a records schedule to NARA. Until NARA approves the proposed records schedule, disposal is not authorized.

RECORD SOURCE CATEGORIES:

Government Departments and Agencies requiring services of Treasury Department for issuance and payment of Treasury checks.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.012

SYSTEM NAME:

Pre-complaint Counseling and Complaint Activities—Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Treasury Department, Prince George's Metro Center II, 3700 East-West Highway, Room 132, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees seeking services of EEO Counselors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Monthly pre-complaint activity reports from seven Financial Centers and Headquarters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 7154; 42 U.S.C. 200e–16; Executive Order 11478; and 5 CFR part 713.

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

These records may be used to:

(1) Keep records on EEO Counseling activities for annual submission to Treasury; and

(2) Disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy.

RETRIEVABILITY:

Filed by station and date of receipt.

SAFEGUARDS:

Staff supervision is maintained during the day. Records are kept locked in the files.

RETENTION AND DISPOSAL:

Destroy EEO case files 4 years after final adjustment. Destroy pre-complaint counseling reports after 1 year.

SYSTEM MANAGER(S) AND ADDRESS:

EEO Officer, Financial Management Service, Prince George's Metro Center II, 3700 East-West Highway, Room 132, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be addressed to the Disclosure Officer, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C concerning requirements of this Department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Monthly submissions by Financial Centers and Headquarters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.013

SYSTEM NAME:

Gifts to the United States-Treasury/Financial Management Service.

SYSTEM LOCATION:

Financial Management Service, U.S. Department of the Treasury, Prince George's Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Donors of inter vivos and testamentary gifts to the United States.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence, copies of wills and court proceedings, and other material related to gifts to the United States.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3113.

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

The records may be used to disclose information to appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy.

RETRIEVABILITY:

Name of donor.

SAFEGUARDS:

Access is limited to persons on official business.

RETENTION AND DISPOSAL:

Permanent retention.

SYSTEM MANAGER(S) AND ADDRESS:

Financial Information Management, Directorate, Financial Management Service, Prince George's Metro Center II, 3700 East-West Highway, Hyattsville, MD 20782.

NOTIFICATION PROCEDURE:

Individuals wishing to be notified if they are named in this system of records, or gain access to records maintained in this system must submit a written request containing the following elements:

(1) Identify the record system;

(2) Identify the category and type of records sought; and

(3) Provide at least two items of secondary identification (date of birth, employee identification number, dates of employment or similar information). Address inquiries to Disclosure Officer (See ''Record access procedures'' below).

RECORD ACCESS PROCEDURES:

Disclosure Officer, Financial Management Service, U.S. Department of the Treasury, Liberty Center Building, 401 14th Street, SW., Washington, DC 20227.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Individuals, executors, administrators and other involved persons.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.014

SYSTEM NAME:

Debt Collection Operations System—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located in the offices of and with the Debt Management Services staff of the Financial Management Service, U.S. Department of the Treasury at the following locations: Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227; Prince George's Plaza, 3700 East-West Highway, Hyattsville, MD 20782; and the Birmingham Debt Management Operations Center, 190 Vulcan Road, Homewood, Alabama 35209.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who owe debts to: (a) The United States, through one or more of its departments and agencies; and/or (b) States, territories and commonwealths of the United States, and the District of Columbia (hereinafter collectively referred to as ''states'').

CATEGORIES OF RECORDS IN THE SYSTEM:

Debt records containing information about the debtor(s), the type of debt, the governmental entity to which the debt is owed, and the debt collection tools utilized to collect the debt. The records may contain identifying information, such as name(s) and taxpayer identifying number (*i.e.,* social security number or employer identification number); debtor contact information, such as work and home address, and work and home telephone numbers; and name of employer and employer address. Debts include unpaid taxes, loans, assessments, fines, fees, penalties, overpayments, advances, extensions of credit from sales of goods or services, and other amounts of money or property owed to, or collected by, the Federal Government or a state, including past due support which is being enforced by a state. The records also may contain information about: (a) The debt, such as the original amount of the debt, the debt account number, the date the debt originated, the amount of the delinquency or default, the date of delinquency or default, basis for the debt, amounts accrued for interest, penalties, administrative costs, and payments on the account; (b) Actions taken to collect or resolve the debt, such as copies of demand letters or invoices, documents or information required for the referral of accounts to collection agencies or for litigation, and collectors' notes regarding telephone or other communications related to the collection or resolution of the debt; and (c) The referring or governmental agency that is collecting or owed the debt, such as name, telephone number, and address of the agency contact.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Claims Collection Act of 1966 (Pub. L. 89–508), as amended by the Debt Collection Act of 1982 (Pub. L. 97–365, as amended); Deficit Reduction Act of 1984 (Pub. L. 98–369, as amended); Debt Collection Improvement Act of 1996 (Pub. L. 104–134, sec. 31001); Taxpayer Relief Act of 1997 (Pub. L. 105–34); Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105–206); 26 U.S.C. 6402; 26 U.S.C. 6331; 31 U.S.C. Chapter 37 (Claims), Subchapter I (General) and Subchapter II (Claims of the U.S. Government).

PURPOSE(S):

The purpose of this system is to maintain records about individuals who owe debt(s) to the United States, through one or more of its departments and agencies, and/or to states, including past due support enforced by states. The information contained in the records is maintained for the purpose of taking action to facilitate the collection and resolution of the debt(s) using various collection methods, including, but not limited to, requesting repayment of the debt by telephone or in writing, offset, levy, administrative wage garnishment, referral to collection agencies or for litigation, and other collection or resolution methods authorized or

required by law. The information also is maintained for the purpose of providing collection information about the debt to the agency collecting the debt, to provide statistical information on debt collection operations, and for the purpose of testing and developing enhancements to the computer systems which contain the records.

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

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or implementing a statute, rule, regulation, order, or license;

(2) A court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena where relevant or potentially relevant to a proceeding, or in connection with criminal law proceedings;

(3) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(4) Any Federal agency, state or local agency, U.S. territory or commonwealth, or the District of Columbia, or their agents or contractors, including private collection agencies (consumer and commercial):

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to;

(i) Request for repayment by telephone or in writing;

(ii) Negotiation of voluntary repayment or compromise agreements;

(iii) Offset of Federal payments, which may include the disclosure of information contained in the records for the purpose of providing the debtor with appropriate pre-offset notice and to otherwise comply with offset prerequisites, to facilitate voluntary repayment in lieu of offset, and to otherwise effectuate the offset process;

(iv) Referral of debts to private collection agencies, to Treasury-designated debt collection centers, or for litigation;

(v) Administrative and court-ordered wage garnishment;

(vi) Debt sales;

(vii) Publication of names and identities of delinquent debtors in the media or other appropriate places; and

(viii) Any other debt collection method authorized by law;

b. To conduct computerized comparisons to locate Federal payments to be made to debtors;

c. To conduct computerized comparisons to locate employers of, or obtain taxpayer identifying numbers or other information about, an individual for debt collection purposes;

d. To collect a debt owed to the United States through the offset of payments made by states, territories, commonwealths, or the District of Columbia;

e. To account or report on the status of debts for which such entity has a financial or other legitimate need for the information in the performance of official duties;

f. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset;

g. To develop, enhance and/or test database, matching, communications, or other computerized systems which facilitate debt collection processes; or

h. For any other appropriate debt collection purpose.

(5) The Department of Defense, the U.S. Postal Service, or other Federal agency for the purpose of conducting an authorized computer matching program in compliance with the Privacy Act of 1974, as amended, to identify and locate individuals receiving Federal payments including, but not limited to, salaries, wages, and benefits), which may include the disclosure of information contained in the records for the purpose of requesting voluntary repayment or implementing Federal employee salary offset or other offset procedures;

(6) The Department of Justice for the purpose of litigation to enforce collection of a delinquent debt or to obtain the Department of Justice's concurrence in a decision to compromise, suspend, or terminate collection action on a debt;

(7) Any individual or other entity who receives Federal payments as a joint payee with a debtor for the purpose of providing notice of, and information about, offsets from such Federal payments; and

(8) Any individual or entity:

a. To facilitate the collection of debts through the use of any combination of various debt collection methods required or authorized by law, including, but not limited to:

(i) Administrative and court-ordered wage garnishment;

(ii) Report information to commercial credit bureaus;

(iii) Conduct asset searches;

(iv) Publish names and identities of delinquent debtors in the media or other appropriate places; or

(v) Debt sales;

b. For the purpose of denying Federal financial assistance in the form of a loan or loan guaranty to an individual who owes delinquent debt to the United States or who owes delinquent child support that has been referred to FMS for collection by administrative offset; or

c. For any other appropriate debt collection purpose. Disclosure to consumer reporting agencies, including for the provision of routine debt collection services by an FMS contractor subject to the same limitations applicable to FMS officers and employees under the Privacy Act:

Debt information concerning a government claim against a debtor is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of an overdue debt; and

(9) Appropriate agencies, entities, and persons when (A) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (B) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (C) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic

RETRIEVABILITY:

Records are retrieved by various combinations of name, taxpayer identifying number (*i.e.,* Social Security number or employer identification number), or debt account number.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager. Procedural and physical safeguards are

utilized, such as accountability, receipt records, and specialized communications security. Access to computerized records is limited, through use of access codes, entry logs, and other internal mechanisms, to those whose official duties require access. Hard-copy records are held in steel cabinets, with access limited by visual controls and/or lock system. During normal working hours, files are attended by responsible officials; files are locked up during non-working hours. The building is patrolled by uniformed security guards.

RETENTION AND DISPOSAL:

Retention periods vary by record type, up to a maximum of seven years after the end of the fiscal year in which a debt is resolved or returned to the agency as uncollectible.

SYSTEM MANAGER(S) AND ADDRESS:

System Manager, Debt Management Services, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See **RECORD ACCESS PROCEDURES** above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained, Federal and state agencies to which the debt is owed, Federal employing agencies and other entities that employ the individual, Federal and state agencies issuing payments, collection agencies, locator and asset search companies, credit bureaus, Federal, state or local agencies furnishing identifying information and/or address of debtor information, or from public documents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.016

SYSTEM NAME:

Payment Records for Other Than Regular Recurring Benefit Payments—Treasury/Financial Management Service.

SYSTEM LOCATION:

The Financial Management Service, U.S. Department of the Treasury, Washington, DC 20227 and Hyattsville, MD 20782. Records maintained at Financial Centers in five regions: Austin, TX; Birmingham, AL; Kansas City, MO; Philadelphia, PA; and San Francisco, CA. Records also are located throughout the United States at Federal Reserve Banks which act as Treasury's fiscal agents. The address(es) of the fiscal agents may be obtained from the system managers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons who are the intended recipients or recipients of payments from the United States Government, and for whom vouchers have been certified for payment by departments or agencies and sent to FMS for disbursement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Payment records showing name, Social Security or employer identification number or other agency identification number, address, payment amount, date of issuance, check number and symbol or other payment identification number, routing number of the payee's financial institution and the payee's account number at the financial institution, vendor contract and/or purchase order, and the name and location number of the certifying department or agency.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Executive Order 6166, dated June 10, 1933.

PURPOSE:

To facilitate disbursement of Federal monies to individuals by check or electronically, authorized under various programs of the Federal Government.

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

These records may be used to:

(1) Disclose to the banking industry for payment verification;

(2) Disclose to Federal agencies, departments and agencies for whom payments are made, and payees;

(3) Disclose pertinent information to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting violations of, or for enforcing or implementing, a statute, rule, regulation, order, or license, where the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

(4) Disclose information to a Federal, State, or local agency, maintaining civil, criminal or other relevant enforcement information or other pertinent information, which has requested information relevant to or necessary to the requesting agency's or the bureau's hiring or retention of an individual, or issuance of a security clearance, license, contract, grant, or other benefit;

(5) Disclose information to a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to opposing counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, in response to a subpoena, or in connection with criminal law proceedings;

(6) Disclose information to foreign governments in accordance with formal or informal international agreements;

(7) Provide information to a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(8) Provide information to the news media in accordance with guidelines contained in 28 CFR 50.2 which relate to an agency's functions relating to civil and criminal proceedings;

(9) Provide information to unions recognized as exclusive bargaining representatives under the Civil Service Reform Act of 1978, 5 U.S.C. 7111 and 7114;

(10) Provide information to third parties during the course of an investigation to the extent necessary to obtain information pertinent to the investigation;

(11) Disclose information concerning delinquent debtors to Federal creditor agencies, their employees, or their agents for the purpose of facilitating or conducting Federal administrative offset, Federal tax refund offset, Federal salary offset, or for any other authorized debt collection purpose;

(12) Disclose information to any State, Territory or Commonwealth of the United States or the District of Columbia to assist in the collection of State, Commonwealth, Territory or District of Columbia claims pursuant to a reciprocal agreement between FMS and

the State, Territory, Commonwealth or the District of Columbia;

(13) Disclose to the Defense Manpower Data Center and the United States Postal Service and other Federal agencies through authorized computer matching programs for the purpose of identifying and locating individuals who are delinquent in their repayment of debts owed to the Department or other Federal agencies in order to collect those debts through salary offset and administrative offset, or by the use of other debt collection tools;

(14) Disclose information to a contractor of the Financial Management Service for the purpose of performing routine payment processing services, subject to the same limitations applicable to FMS officers and employees under the Privacy Act;

(15) Disclose information to a fiscal or financial agent of the Financial Management Service, its employees, agents, and contractors, or to a contractor of the Financial Management Service, for the purpose of ensuring the efficient administration of payment processing services, subject to the same or equivalent limitations applicable to FMS officers and employees under the Privacy Act; and

(16) Disclose information to appropriate agencies, entities, and persons when (b) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

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

STORAGE:

Hardcopy/Electronic.

RETRIEVABILITY:

Records are retrieved by name, employer identification number (EIN) and social security number.

SAFEGUARDS:

These records are available only to those persons whose official duties require such access. Records are kept in limited access areas during duty hours and in locked cabinets at all other times. Records are password protected and are maintained in a building subject to 24-hour security.

RETENTION AND DISPOSAL:

Disposal is not authorized at this time.[4]

SYSTEM MANAGER(S) AND ADDRESS:

Chief Disbursing Officer, Financial Management Service; Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974 shall be sent to the Disclosure Officer at 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the record requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974 concerning procedures for gaining access or contesting records should write to the Disclosure Officer at the address shown above. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR Part 1, subpart C concerning requirements of this department with respect to the Privacy Act of 1974.

CONTESTING RECORD PROCEDURES:

See Record Access Procedures above.

RECORD SOURCE CATEGORIES:

Federal departments and agencies responsible for certifying, disbursing and collecting Federal payments; Treasury fiscal and financial agents that process payments and collections; and commercial database vendors. Each of these record sources may include information obtained from individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

TREASURY/FMS.017

SYSTEM NAME:

Collections Records—Treasury/Financial Management Service.

SYSTEM LOCATION:

Records are located at the Financial Management Service, U.S. Department of the Treasury, Liberty Center Building (Headquarters), 401 14th Street, SW., Washington, DC 20227. Records are also located throughout the United States at various Federal Reserve Banks and financial institutions, which act as Treasury's fiscal and financial agents. The address(es) of the fiscal and financial agents may be obtained from the system manager below.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who electronically authorize payments to the Federal government through the use of communication networks, such as the Internet, via means such as Automated Clearing House (ACH), check conversion, credit card, and/or stored value card.

CATEGORIES OF RECORDS IN THE SYSTEM:

Collections records containing information about individuals who electronically authorize payments to the Federal government to the extent such records are covered by the Privacy Act of 1974. The records may contain identifying information, such as an individual's name(s), taxpayer identifying number (*i.e.,* Social Security number or employer identification number), home address, home telephone number, and personal e-mail address (home and work); an individual's employer's name, address, telephone number, and e-mail address; an individual's date of birth and driver's license number; information about an individual's bank account(s) and other types of accounts from which payments are made, such as financial institution routing and account number; credit card numbers; information about an individual's payments made to or from the United States (or to other entities such as private contractors for the Federal government), including the amount, date, status of payments, payment settlement history, and tracking numbers used to locate payment information; user name and password assigned to an individual; other information used to identify and/or authenticate the user of an electronic system to authorize and make payments, such as a unique question and answer chosen by an individual; information concerning the authority of an individual to use an electronic system (access status) and the individual's historical use of the electronic system. The records also may contain information about the governmental agency to which payment is made and

[4] FMS is updating its records schedules for these records to provide for a retention period of seven years for most payment records and a retention period of 20 years for certain trust-fund-related records. FMS must submit these records schedules to NARA. Until NARA approves the updated records schedules, disposal is not authorized.

information required by such agency as authorized or required by law.

The information contained in the records covered by FMS's system of records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. It is noted that the system covers records obtained in connection with various mechanisms that are either used currently or may be used in the future for electronic financial transactions. Not every transaction will require the maintenance of all of the information listed in this section. The categories of records cover the broad spectrum of information that might be connected to various types of transactions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; 31 U.S.C. 321; 31 U.S.C. chapter 33; 31 U.S.C. 3720.

PURPOSE(S):

The purpose of this system is to maintain records about individuals who electronically authorize payments to the Federal government. The information contained in the records is maintained for the purpose of facilitating the collection and reporting of receipts from the public to the Federal government and to minimize the financial risk to the Government and the public of unauthorized use of electronic payment methods. Examples of payment mechanisms authorized electronically include ACH, check conversion, credit card, or stored value cards. Individuals may authorize payments using paper check conversion or Internet-based systems through programs such as ''Pay.gov'' and ''Electronic Federal Taxpayer Payment System (EFTPS).'' The information also is maintained to:

(a) Provide collections information to the Federal agency collecting the public receipts;

(b) Authenticate the identity of individuals who electronically authorize payments to the Federal government;

(c) Verify the payment history and eligibility of individuals to electronically authorize payments to the Federal government;

(d) Provide statistical information on collections operations;

(e) Test and develop enhancements to the computer systems that contain the records; and

(f) Collect debts owed to the Federal government from individuals when the debt arises from the unauthorized use of electronic payment methods.

FMS's use of the information contained in the records is necessary to process financial transactions while protecting the government and the public from financial risks that could be associated with electronic transactions. The records are collected and maintained for three primary reasons. First, in order to process a payment electronically, a payor needs to submit his or her name and bank account or credit card account information. Without such information, FMS would not be able to process the payment as requested by the individual authorizing the payment. Second, to authenticate the identity of the person initiating the electronic transaction, FMS may, in some instances, require some or all of the information described in ''Categories of records in the system,'' above, depending upon the level of risk associated with a particular type of transaction. Third, to verify the financial and other information provided by the person initiating the electronic transaction and to evaluate the payor's ability to make the payment authorized, FMS may compare information submitted with information available in FMS's electronic transaction historical database or commercial databases used for verification purposes, much like a store clerk determines whether someone paying by paper check has a history of writing bad checks. The ability to research historical transaction information will help eliminate the risk of fraudulent activity, such as the purchase of government products using an account with insufficient funds or using a stolen identity. By collecting and maintaining a certain amount of unique personal information about an individual who purchases goods from the government, FMS can help ensure that the individual's sensitive financial information will not be fraudulently accessed or used by anyone other than the individual.

In addition, the information contained in the covered records will be used for collateral purposes related to the processing of financial transactions, such as collection of statistical information on operations, development of computer systems, investigation of unauthorized or fraudulent activity related to electronic transactions, and the collection of debts arising out of such activity.

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

These records may be used to disclose information to:

(1) Appropriate Federal, state, local or foreign agencies responsible for investigating or prosecuting the violation of, or for enforcing or implementing, a statute, rule, regulation, order, or license, but only if the investigation, prosecution, enforcement or implementation concerns a transaction(s) or other event(s) that involved (or contemplates involvement of), in whole or part, an electronic method of collecting receipts for the Federal government. The records and information may also be disclosed to commercial database vendors to the extent necessary to obtain information pertinent to such an investigation, prosecution, enforcement or implementation;

(2) Commercial database vendors for the purposes of authenticating the identity of individuals who electronically authorize payments to the Federal government, to obtain information on such individuals' payment or check writing history, and for administrative purposes, such as resolving a question about a transaction. For purposes of this notice, the term ''commercial database vendors'' means vendors who maintain and disclose information from consumer credit, check verification, and address databases;

(3) A court, magistrate, or administrative tribunal, in the course of presenting evidence, including disclosures to opposing counsel or witnesses, for the purpose of civil discovery, litigation, or settlement negotiations or in response to a subpoena, where arguably relevant to the litigation, or in connection with criminal law proceedings;

(4) A congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(5) Fiscal agents, financial agents, financial institutions, and contractors for the purpose of performing financial management services, including, but not limited to, processing payments, investigating and rectifying possible erroneous reporting information, creating and reviewing statistics to improve the quality of services provided, conducting debt collection services, or developing, testing and enhancing computer systems;

(6) Federal agencies, their agents and contractors for the purposes of facilitating the collection of receipts, determining the acceptable method of collection, the accounting of such receipts, and the implementation of programs related to the receipts being collected;

(7) Federal agencies, their agents and contractors, credit bureaus, and employers of individuals who owe delinquent debt for the purpose of garnishing wages only when the debt

arises from the unauthorized use of electronic payment methods. The information will be used for the purpose of collecting such debt through offset, administrative wage garnishment, referral to private collection agencies, litigation, reporting the debt to credit bureaus, or for any other authorized debt collection purpose;

(8) Financial institutions, including banks and credit unions, and credit card companies for the purpose of collections and/or investigating the accuracy of information required to complete transactions using electronic methods and for administrative purposes, such as resolving questions about a transaction; and

(9) Appropriate agencies, entities, and persons when (a) the Department suspects or has confirmed that the security or confidentiality of information in the system of records has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interests, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Debt information concerning a government claim against a debtor when the debt arises from the unauthorized use of electronic payment methods is also furnished, in accordance with 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(e), to consumer reporting agencies, as defined by the Fair Credit Reporting Act, 5 U.S.C. 1681(f), to encourage repayment of a delinquent debt.

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

STORAGE:

Electronic.

RETRIEVABILITY:

Records are retrieved by account number (such as financial institution account number or credit card account number), name (including an authentication credential, *e.g.,* a user name), social security number, transaction identification number, or other alpha/numeric identifying information.

SAFEGUARDS:

All officials access the system of records on a need-to-know basis only, as authorized by the system manager after security background checks. Procedural and physical safeguards, such as personal accountability, audit logs, and specialized communications security, are utilized. Accountability and audit logs allow systems managers to track the actions of every user of the system. Each user has an individual password (as opposed to a group password) for which he or she is responsible. Thus, a system manager can identify access to the records by user. Access to computerized records is limited, through use of encryption, access codes, and other internal mechanisms, to those whose official duties require access. Storage facilities are secured by various means such as security guards, locked doors with key entry, and limited virtual access requiring a physical token.

RETENTION AND DISPOSAL:

Disposal is not authorized at this time.[5]

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Commissioner, Federal Finance, Financial Management Service, 401 14th Street, SW., Washington, DC 20227.

NOTIFICATION PROCEDURE:

Inquiries under the Privacy Act of 1974, as amended, shall be addressed to the Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, DC 20227. All individuals making inquiries should provide with their request as much descriptive matter as is possible to identify the particular record desired. The system manager will advise as to whether FMS maintains the records requested by the individual.

RECORD ACCESS PROCEDURES:

Individuals requesting information under the Privacy Act of 1974, as amended, concerning procedures for gaining access to or contesting records should write to the Disclosure Officer. All individuals are urged to examine the rules of the U.S. Department of the Treasury published in 31 CFR part 1, subpart C, and appendix G, concerning requirements of this Department with respect to the Privacy Act of 1974, as amended.

CONTESTING RECORD PROCEDURES:

See ''Record access procedures'' above.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the individual on whom the record is maintained (or by his or her authorized representative), other persons who electronically authorize payments to the Federal government, Federal agencies responsible for collecting receipts, Federal agencies responsible for disbursing and issuing Federal payments, Treasury fiscal and financial agents that process collections, and commercial database vendors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–11415 Filed 5–14–09; 8:45 am]

BILLING CODE 4810–35–P

[5] FMS is updating its records schedules for these records to provide for a retention period of seven years for most collections records, and a retention period of 20 years for certain trust-fund-related records. FMS must submit the record schedules to NARA. Until NARA approves the updated records schedules, disposal is not authorized.

Federal Register

Friday,
May 15, 2009

Part II

Environmental Protection Agency

40 CFR Part 93

Transportation Conformity Rule $PM_{2.5}$ and PM_{10} Amendments; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 93

[EPA–HQ–OAR–2008–0540; FRL–8904–1]

RIN 2060–AP29

Transportation Conformity Rule $PM_{2.5}$ and PM_{10} Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing amendments to the transportation conformity rule that primarily affect conformity's implementation in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. EPA is proposing to update the transportation conformity regulation in light of the October 17, 2006 final rule that strengthened the 24-hour $PM_{2.5}$ air quality standard and revoked the annual PM_{10} standard. In addition, EPA is proposing to clarify the regulations concerning hot-spot analyses to address a remand from the Court of Appeals for the District of Columbia Circuit (*Environmental Defense* v. *EPA,* 509 F.3d 553 (DC Cir. 2007)). This portion of the proposal applies to $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas as well as carbon monoxide nonattainment and maintenance areas.

The Clean Air Act requires federally supported transportation plans, transportation improvement programs, and projects to be consistent with (''conform to'') the purpose of the state air quality implementation plan. DOT is EPA's federal partner in implementing the transportation conformity regulation. EPA has consulted with DOT, and they concur with this proposed rule.

DATES: Written comments on this proposal must be received on or before June 15, 2009, unless a public hearing is requested by May 26, 2009. If a public hearing is requested by a commenter, it will be held June 4, 2009 at the U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan. If a hearing is requested, written comments must be received by June 29, 2009.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0540, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- E-mail: *a-and-r-docket@epa.gov.*
- Fax: (202) 566–9744.
- Mail: Air Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OAR–2008–0540. Please include a total of two copies.
- Hand Delivery: Air Docket, Environmental Protection Agency, Mailcode: EPA West Building, EPA Docket Center (Room 3334), 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OAR–2008–0540. Please include two copies. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0540. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Air and Radiation Docket is (202) 566–1742.

Public Hearing: If a public hearing is requested, it will be held at the U.S. Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, Michigan, on June 4, 2009.

FOR FURTHER INFORMATION CONTACT: Laura Berry, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: *berry.laura@epa.gov,* telephone number: (734) 214–4858, fax number: (734) 214–4052; or Patty Klavon, State Measures and Conformity Group, Transportation and Regional Programs Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105, e-mail address: *klavon.patty@epa.gov,* telephone number: (734) 214–4476, fax number: (734) 214–4052.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. General Information
II. Background on the Transportation Conformity Rule
III. General Overview of Transportation Conformity for the 2006 $PM_{2.5}$ NAAQS
IV. Baseline Year for Certain 2006 $PM_{2.5}$ Nonattainment Areas
V. Regional Conformity Tests in 2006 $PM_{2.5}$ Nonattainment Areas That Do Not Have Adequate or Approved SIP Budgets for the 1997 $PM_{2.5}$ NAAQS
VI. Regional Conformity Tests in 2006 $PM_{2.5}$ Areas That Have 1997 $PM_{2.5}$ SIP Budgets
VII. Other Conformity Requirements for 2006 $PM_{2.5}$ Areas
VIII. Transportation Conformity in PM_{10} Nonattainment and Maintenance Areas and the Revocation of the Annual PM_{10} NAAQS
IX. Response to the December 2007 Hot-Spot Court Decision
X. Statutory and Executive Order Reviews

I. General Information

A. Does this Action Apply to Me?

Entities potentially regulated by the conformity rule are those that adopt,

approve, or fund transportation plans, programs, or projects under title 23 U.S.C. or title 49 U.S.C. Regulated categories and entities affected by today's action include:

Category	Examples of regulated entities
Local government	Local transportation and air quality agencies, including metropolitan planning organizations (MPOs).
State government	State transportation and air quality agencies.
Federal government	Department of Transportation (Federal Highway Administration (FHWA) and Federal Transit Administration (FTA)).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposal. This table lists the types of entities of which EPA is aware that potentially could be regulated by the transportation conformity rule. Other types of entities not listed in the table could also be regulated. To determine whether your organization is regulated by this action, you should carefully examine the applicability requirements in 40 CFR 93.102. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. What Should I Consider as I Prepare My Comments for EPA?

1. Submitting CBI

Do not submit this information to EPA through *www.regulations.gov* or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

3. Docket Copying Costs

You may be required to pay a reasonable fee for copying docket materials.

C. How Do I Get Copies of This Proposed Rule and Other Documents?

1. Docket

EPA has established an official public docket for this action under Docket ID No. EPA–HQ–OAR–2008–0540. You can get a paper copy of this **Federal Register** document, as well as the documents specifically referenced in this action, any public comments received, and other information related to this action at the official public docket. See the **ADDRESSES** section for its location.

2. Electronic Access

You may access this **Federal Register** document electronically through EPA's Transportation Conformity Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm.* You may also access this document electronically under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the official public docket is available through *www.regulations.gov*. You may use *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the electronic public docket. Information claimed as CBI and other information for which disclosure is restricted by statute is not available for public viewing in the electronic public docket. EPA's policy is that copyrighted material will not be placed in the electronic public docket but will be available only in printed, paper form in the official public docket.

To the extent feasible, publicly available docket materials will be made available in the electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in the electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in the **ADDRESSES** section. EPA intends to provide electronic access in the future to all of the publicly available docket materials through the electronic public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to the electronic public docket. Public comments that are mailed or delivered to the docket will be scanned and placed in the electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in the electronic public docket along with a brief description written by the docket staff.

For additional information about the electronic public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

II. Background on the Transportation Conformity Rule

A. What Is Transportation Conformity?

Transportation conformity is required under Clean Air Act section 176(c) (42 U.S.C. 7506(c)) to ensure that transportation plans, transportation improvement programs (TIPs) and federally supported highway and transit project activities are consistent with (''conform to'') the purpose of the state air quality implementation plan (SIP). Conformity to the purpose of the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the relevant national ambient air quality standards (NAAQS). Transportation conformity applies to areas that are designated nonattainment, and those areas redesignated to attainment after 1990 (''maintenance areas'') for transportation-related criteria

pollutants: Carbon monoxide (CO), ozone, nitrogen dioxide (NO_2) and particulate matter ($PM_{2.5}$, and PM_{10}).[1]

EPA's transportation conformity rule (40 CFR Parts 51 and 93) establishes the criteria and procedures for determining whether transportation activities conform to the SIP. EPA first promulgated the transportation conformity rule on November 24, 1993 (58 FR 62188), and subsequently published several other amendments. DOT is EPA's federal partner in implementing the transportation conformity regulation. EPA has consulted with DOT, which concurs with this proposed rule.

A few recent amendments to the transportation conformity rule are useful background for today's proposal. In a final rule EPA published on July 1, 2004 (69 FR 40004), EPA provided conformity procedures for state and local agencies under the 1997 8-hour ozone and $PM_{2.5}$ national ambient air quality standards (NAAQS), among other things. EPA's nonattainment area designations for the 1997 8-hour ozone and $PM_{2.5}$ NAAQS were effective in June 2004 and April 2005 respectively. The July 2004 update provided guidance and rules for implementing conformity for these NAAQS. In addition, on May 6, 2005, EPA promulgated a final rule entitled, ''Transportation Conformity Rule Amendments for the New $PM_{2.5}$ National Ambient Air Quality Standard: $PM_{2.5}$ Precursors'' (70 FR 24280). This final rule specified transportation-related $PM_{2.5}$ precursors and when they must be considered in transportation conformity determinations in $PM_{2.5}$ nonattainment and maintenance areas.

On March 10, 2006, EPA promulgated a final rule (71 FR 12468) entitled, ''$PM_{2.5}$ and PM_{10} Hot-Spot Analyses in Project-Level Transportation Conformity Determinations for the New $PM_{2.5}$ and Existing PM_{10} National Ambient Air Quality Standards.'' This rule established the criteria and procedures for determining which transportation projects must be analyzed for local air quality impacts—or ''hot-spots''—in $PM_{2.5}$ and PM_{10} nonattainment and maintenance areas. See Section IX. of today's preamble for more information regarding the March 2006 rule; see EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/index.htm* for further information about any of EPA's transportation conformity rulemakings.[2]

B. Why Are We Issuing This Proposed Rule?

Today's proposed rule is necessary because EPA promulgated a final rule on October 17, 2006 that changed the $PM_{2.5}$ and PM_{10} NAAQS, as described further below. These revisions to the $PM_{2.5}$ and PM_{10} NAAQS necessitate an update to the transportation conformity rule to provide guidance and rules for implementing conformity for these NAAQS. Sections III. through VIII. describe the proposed changes to the transportation conformity rule that are a result of the October 2006 revisions to the $PM_{2.5}$ and PM_{10} NAAQS.

Today's proposed rule is also necessary because of a court decision regarding the March 2006 hot-spot rulemaking. Section IX. of this preamble describes the issue, the court's decision, and EPA's proposed response.

III. General Overview of Transportation Conformity for the 2006 $PM_{2.5}$ NAAQS

A. Background on 2006 $PM_{2.5}$ NAAQS Development

EPA issued a final rule on October 17, 2006 that strengthened the 24-hour $PM_{2.5}$ NAAQS and revoked the annual PM_{10} NAAQS (71 FR 61144). In that final rule, EPA strengthened the 24-hour $PM_{2.5}$ NAAQS from the 1997 level of 65 micrograms per cubic meter ($\mu g/m^3$) (average of 98th percentile values for three consecutive years) to 35 $\mu g/m^3$, while the level of the annual $PM_{2.5}$ NAAQS remained unchanged at 15.0 $\mu g/m^3$ (average of three consecutive annual average values). This final rule was effective on December 18, 2006. EPA selected levels for the final NAAQS after completing an extensive review of thousands of scientific studies on the impact of fine and coarse particles on public health and welfare. For additional information about the October 17, 2006 rulemaking, the final rule and EPA outreach materials can be found at: *http://www.epa.gov/air/particlepollution/actions.html*.

The October 2006 rule establishing the 2006 $PM_{2.5}$ NAAQS did not revoke the 1997 annual or 24-hour $PM_{2.5}$ NAAQS. See Section D. below for details on how this proposal would interact with conformity requirements for those areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS.

EPA signed the final rule designating areas for the 2006 $PM_{2.5}$ NAAQS on December 22, 2008. Conformity for the 2006 $PM_{2.5}$ NAAQS will apply one year after the effective date of the nonattainment designations.[3] The designations for the 2006 $PM_{2.5}$ NAAQS are separate from and do not impact existing designations for the 1997 $PM_{2.5}$ NAAQS.

B. When Does Conformity Apply for the 2006 $PM_{2.5}$ NAAQS?

Transportation conformity for the 2006 24-hour $PM_{2.5}$ NAAQS (''2006 $PM_{2.5}$ NAAQS'') does not apply until one year after the effective date of nonattainment designations for this NAAQS. Clean Air Act section 176(c)(6) and 40 CFR 93.102(d) provide a one-year grace period from the effective date of designations before transportation conformity applies in areas newly designated nonattainment for a particular NAAQS.[4]

The following discussion provides more details on the application of the one-year grace period in specific types of newly designated nonattainment areas for the 2006 $PM_{2.5}$ NAAQS in metropolitan, donut and isolated rural areas. This information is consistent with how conformity for new NAAQS has been implemented in the past.

1. Metropolitan Areas

Metropolitan areas are urbanized areas that have a population greater than 50,000 and a designated metropolitan planning organization (MPO) responsible for transportation planning per 23 U.S.C. 134. The one-year grace period means that, in general, within one year after the effective date of the initial nonattainment designation for a given pollutant and NAAQS, the area's MPO and DOT must make a conformity determination with regard to that pollutant and NAAQS for the area's transportation plan and TIP. The procedures for interagency consultation process found in 40 CFR 93.105 or a state's approved conformity SIP must be used in making conformity determinations for transportation plans and TIPs. MPOs must continue to meet conformity requirements for any other

[1] 40 CFR 93.102(b)(1) defines $PM_{2.5}$ and PM_{10} as particles with an aerodynamic diameter less than or equal to a nominal 2.5 and 10 micrometers, respectively.

[2] At this Web site, click on ''Regulations'' to find all of EPA's proposed and final rules as well the current transportation conformity regulations.

[3] The effective date for these nonattainment designations will be included in the **Federal Register** publication of the final designations rule.

[4] EPA began the process of notifying state and local agencies, via the EPA regional offices, of the timing of conformity under the 2006 $PM_{2.5}$ NAAQS in its April 16, 2007 memorandum entitled, ''Transportation Conformity and the Revised 24-hour $PM_{2.5}$ Standard,'' from Merrylin Zaw-Mon, Director, Transportation and Regional Programs Division, EPA Office of Transportation and Air Quality, to EPA Regional Air Directors, Regions I–X.

applicable NAAQS, including the 1997 $PM_{2.5}$ NAAQS, if the area is designated nonattainment or maintenance for such NAAQS as well.

The one-year grace period for conformity also applies to project-level conformity determinations (including hot-spot analyses in certain cases) in newly designated 2006 $PM_{2.5}$ nonattainment areas. At the end of the one-year grace period for conformity, requirements for project-level conformity determinations must be met for the 2006 $PM_{2.5}$ NAAQS before any new federal approvals for such projects can occur. For non-exempt Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) projects, a conformity determination is normally required before the National Environmental Policy Act (NEPA) process is completed, since NEPA is typically the first stage requiring approval in a federal project's development. However, if the NEPA process was completed before conformity applies, then areas that are newly designated as nonattainment may also be required to demonstrate conformity for subsequent funding and approvals for project phases (*e.g.*, right-of-way acquisition, final design, construction). Conformity would be needed for a subsequent project phase if it occurs after the grace period has ended, and the project has not yet been included in a conformity determination for the relevant pollutant and NAAQS or met other applicable conformity requirements.

Before the end of the one-year grace period, FHWA or FTA could voluntarily choose to make a project-level conformity determination that meets the conformity rule's requirements. The procedures for interagency consultation found in 40 CFR 93.105 or a state's approved conformity SIP must be used in making project-level conformity determinations for the 2006 $PM_{2.5}$ NAAQS. As described further below in D. of this section, areas that are designated nonattainment for both the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS will need to address all of these NAAQS in conformity determinations.

If, at the conclusion of the one-year grace period, the MPO and DOT have not made a transportation plan and TIP conformity determination for the 2006 $PM_{2.5}$ NAAQS, the area would be in a conformity ''lapse.'' During a conformity lapse, only certain projects can receive additional federal funding or approvals to proceed (*e.g.*, exempt projects, project phases that were approved before the lapse). The practical impact of a conformity lapse will vary on an area-by-area basis. For additional information on projects that can proceed during a conformity lapse, read the following guidance memoranda that address the March 2, 1999 U.S. Court of Appeals decision that affected related provisions of the conformity rule (*Environmental Defense Fund* v. *EPA*, 167 F.3d 641 (DC Cir. 1999): DOT's January 2, 2002 guidance, published in the **Federal Register** on February 7, 2002 (67 FR 5882); DOT's May 20, 2003 and FTA's April 9, 2003 supplemental guidance documents; and, EPA's May 14, 1999 guidance memorandum. EPA's current conformity rule reflects all of these guidance documents (69 FR 40005–40006).

2. Donut Areas

For the purposes of transportation conformity, a ''donut'' area is the geographic area outside a metropolitan planning area boundary, but inside a designated nonattainment or maintenance area boundary that includes an MPO (40 CFR 93.101). The conformity requirements for donut areas, including the application of the one-year conformity grace period, are generally the same as those for metropolitan areas. Within one year of the effective date of an area's initial nonattainment designation for the 2006 $PM_{2.5}$ NAAQS, the existing and planned transportation network for the donut portion of the area (as well as for the metropolitan portion of the area) must demonstrate conformity, or conformity of the metropolitan transportation plan and TIP will lapse as described above, and the entire nonattainment area will be unable to obtain additional project funding and approvals for the duration of the lapse.

The interagency consultation group for each newly designated nonattainment area that includes a donut portion should determine how best to consider the donut area transportation system and new donut area projects in the MPO's regional emissions analyses and transportation plan and TIP conformity determinations. For more discussion on how conformity determinations should be made for donut areas, see the preamble to the July 1, 2004 conformity rule (69 FR 40013).

In nonattainment and maintenance areas with a donut portion, adjacent MPOs must meet conformity requirements for the 2006 $PM_{2.5}$ and other applicable NAAQS, including requirements for any 1997 $PM_{2.5}$ NAAQS for which the donut area is designated nonattainment.

The one-year grace period for conformity also applies to project-level conformity determinations in newly designated nonattainment areas that include a donut portion, as described above for projects in metropolitan areas.

3. Isolated Rural Areas

Isolated rural nonattainment and maintenance areas are areas that do not contain or are not part of any metropolitan planning area as designated by 23 U.S.C. 134 and 49 U.S.C. 5303 (40 CFR 93.101). Isolated rural areas do not have metropolitan transportation plans or TIPs required under 23 U.S.C. 134 and 49 U.S.C. 5303 and 5304 for any portion of the area, and do not have projects that are part of the emissions analysis of any MPO's transportation plan or TIP. Instead, projects in such areas are included only in statewide transportation improvement programs and statewide transportation plans, when appropriate.

As in other newly designated nonattainment areas, the one-year conformity grace period for the 2006 $PM_{2.5}$ NAAQS will begin on the effective date of an isolated rural area's initial nonattainment designation. However, because these areas do not have federally required metropolitan transportation plans and TIPs, they are not subject to the frequency requirements for conformity determinations on transportation plans and TIPs (40 CFR 93.104(b), (c), and (e)). Instead, conformity determinations in isolated rural areas are required only when a non-exempt FHWA/FTA project(s) needs funding or approval.

In fact, many isolated rural areas may not have a transportation project in need of federal funding or approval for some time after the one-year grace period has ended, and therefore, would not have to demonstrate conformity before that time. Once the conformity grace period has expired, a conformity determination would only be required in such areas when a non-exempt FHWA/FTA project needs funding or approval. For more information on the conformity requirements for isolated rural areas, see 40 CFR 93.109(l); corresponding discussions on how to demonstrate conformity in isolated rural areas can also be found in the preambles to the November 24, 1993 transportation conformity final rule (58 FR 62207) and the August 15, 1997 final rule (62 FR 43785).

Please note that the current regulation's § 93.109(l) would be renamed as § 93.109(n) under today's proposal, due to the other proposed revisions and additions in this regulatory section. As we are simply renumbering this provision, we are not seeking comment because it is an administrative change. The basic

conformity requirements for isolated rural areas remain unchanged.

C. Proposed Definitions for $PM_{2.5}$ NAAQS

EPA is proposing two new definitions to § 93.101 of the conformity rule to distinguish between the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS. These definitions would help implement certain conformity requirements in areas that have been designated nonattainment for 1997 $PM_{2.5}$ NAAQS and/or 2006 $PM_{2.5}$ NAAQS. Some areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS also are designated nonattainment for the 1997 $PM_{2.5}$ NAAQS. In addition, some areas are designated for only the 2006 $PM_{2.5}$ NAAQS.

The proposed addition of these definitions is also similar to the existing rule's definitions in 40 CFR 93.101 for the 1-hour ozone NAAQS and 8-hour ozone NAAQS, and the proposed definitions are generally consistent with how EPA is defining both kinds of $PM_{2.5}$ areas for air quality planning purposes. EPA also notes that any provision of the conformity rule that references only ''$PM_{2.5}$'' and does not specify which NAAQS will continue to apply to any area designated nonattainment for a $PM_{2.5}$ NAAQS.

D. How Would This Proposal Interact With Existing Conformity Requirements for the 1997 $PM_{2.5}$ NAAQS?

Sections IV. through VI. of today's proposal describe proposed conformity requirements for areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS. EPA is not proposing any changes to the existing transportation conformity requirements for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS, since EPA's nonattainment designations for the 2006 $PM_{2.5}$ NAAQS will not affect existing 1997 $PM_{2.5}$ NAAQS nonattainment designations.

Nonattainment designations for the 1997 and 2006 $PM_{2.5}$ NAAQS are different designations with separate SIP requirements, different attainment dates, etc. As a result, Clean Air Act section 176(c)(5) requires conformity requirements to be met in both 1997 and 2006 $PM_{2.5}$ nonattainment and maintenance areas, as applicable.

Some areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS have never been subject to $PM_{2.5}$ conformity requirements. Under today's proposal and Clean Air Act section 176(c)(5), these areas would be required to meet only 2006 $PM_{2.5}$ conformity requirements, and not conformity requirements for the 1997 $PM_{2.5}$ NAAQS, because these areas are not designated nonattainment for the 1997 $PM_{2.5}$ NAAQS.

Other areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS have been designated also, in whole or in part, for the 1997 $PM_{2.5}$ NAAQS. These areas would continue to meet their existing conformity requirements for the 1997 $PM_{2.5}$ NAAQS as well as any additional requirements for the 2006 $PM_{2.5}$ NAAQS.

EPA notes that MPOs where both the 1997 and 2006 $PM_{2.5}$ NAAQS apply would have to determine conformity for both NAAQS. MPOs subject to both the 1997 and 2006 $PM_{2.5}$ NAAQS will be able to:

- Use existing transportation models and data for regional emissions analyses for both NAAQS, especially where nonattainment area boundaries are the same;
- Rely on analysis years for conformity determinations that are the same for both NAAQS (*e.g.*, analysis years for the last year of the transportation plan, an intermediate year, etc.); and
- Meet consultation and other conformity requirements through the existing processes.

EPA is also proposing that before budgets for the 2006 $PM_{2.5}$ NAAQS are available, conformity determinations for some 2006 $PM_{2.5}$ areas would be based on the same conformity test (*i.e.,* the budget test) that is being used for the 1997 $PM_{2.5}$ NAAQS. As described in Section VI., EPA is proposing that MPOs use any adequate or approved SIP budgets for the 1997 $PM_{2.5}$ NAAQS for conformity determinations that are made prior to SIP budgets for the 2006 $PM_{2.5}$ NAAQS being available.

Today's proposal does not impact project-level conformity requirements for the 1997 $PM_{2.5}$ NAAQS. For example, EPA is not proposing any changes to the $PM_{2.5}$ hot-spot analysis requirements, and EPA and FHWA's existing guidance for such analyses continues to be available.[5] For the purposes of $PM_{2.5}$ conformity, a hot-spot analysis must address the $PM_{2.5}$ NAAQS for which the area has been designated nonattainment.[6] See Section VII. for further information regarding EPA's proposal for project-level conformity requirements for the 2006 $PM_{2.5}$ NAAQS.

EPA will work with $PM_{2.5}$ nonattainment areas as needed to ensure that state and local agencies can meet conformity requirements for both the applicable 1997 and 2006 $PM_{2.5}$ NAAQS in a timely and efficient manner. EPA requests comment on whether additional information or training will be necessary for conformity implementation under the 2006 $PM_{2.5}$ NAAQS. If your agency submits comments, please be as specific as possible regarding what types of situations and issues may need to be addressed in future implementation of $PM_{2.5}$ conformity requirements.

IV. Baseline Year for Certain 2006 $PM_{2.5}$ Nonattainment Areas

A. Background

Conformity determinations for transportation plans, TIPs, and projects not from a conforming transportation plan and TIP must include a regional emissions analysis that fulfills Clean Air Act provisions. The conformity rule provides for several different regional emissions analysis tests that satisfy Clean Air Act requirements in different situations. Once a SIP with a motor vehicle emissions budget (''budget'') is submitted for an air quality NAAQS and EPA finds the budget adequate for conformity purposes or approves it as part of the SIP, conformity is demonstrated using the budget test for that pollutant or precursor, as described in 40 CFR 93.118.

Before an adequate or approved SIP budget is available, conformity of the transportation plan, TIP, or project not from a conforming transportation plan and TIP is demonstrated with the interim emissions test(s), as described in 40 CFR 93.119. The interim emissions tests include different forms of the ''build/no-build'' test and ''baseline year'' test. In general, for the baseline year test, emissions from the planned transportation system or project not from a conforming transportation plan and TIP are compared to emissions that occurred in the baseline year (please refer to § 93.119 for the more detailed, specific requirements). This part of today's proposal would update § 93.119 of the current conformity rule for the 2006 $PM_{2.5}$ NAAQS. The baseline year for nonattainment areas under the 1997 $PM_{2.5}$ NAAQS is 2002 (40 CFR 93.119(e)(2)). Sections V. and VI. of this proposal go into further detail about how any baseline year option would be applied in 2006 $PM_{2.5}$ areas.

[5] ''Transportation Conformity Guidance for Qualitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas,'' EPA420–B–06–902, March 2006.

[6] EPA notes that today's proposal does not address project requirements for the National Environmental Policy Act or other environmental programs.

B. Proposal

EPA is proposing that a year more recent than 2002 be used as the baseline year for conformity purposes in 2006 $PM_{2.5}$ nonattainment areas. EPA requests comment on the following proposed options:

- *Option 1:* Define the baseline year as 2008;
- *Option 2:* Rather than naming a specific year, define the baseline year for conformity purposes as whatever year would be used to meet other air quality planning requirements, such as SIP planning and inventory requirements;
- *Option 3:* Define the baseline year as 2005.

Option 2 would establish the baseline year for conformity purposes for the 2006 $PM_{2.5}$ nonattainment areas as well as any areas designated for a $PM_{2.5}$ NAAQS that EPA promulgates in the future. Therefore, if this option were finalized, the transportation conformity rule would not have to be amended in the future to establish a new baseline year for conformity if additional NAAQS changes are made in the future.

There are different formulations of regulatory text that EPA could use to define the baseline year under Option 2. For example, EPA could define the baseline year for any area designated for a $PM_{2.5}$ NAAQS promulgated after 1997 as the most recent year for which EPA's Air Emissions Reporting Requirements (AERR) (40 CFR part 51) requires submission of on-road mobile source emissions inventories, as of the effective date of EPA's nonattainment designations for such NAAQS. Another possibility would be to simply define the conformity baseline year as the year that will be used as the baseline for SIP development for given NAAQS, which EPA could specify in a guidance memorandum issued in the future.

Option 2 would likely result in the year 2008 as the baseline year in 2006 $PM_{2.5}$ areas because this is the year anticipated to be the baseline year for SIP planning and inventory requirements. The year 2008 would also be the most recent year of on-road mobile source emissions inventories available for SIP planning purposes when SIPs for the 2006 $PM_{2.5}$ NAAQS are likely to be due.

EPA is proposing rule language for Options 1 and 2 in § 93.119(e)(2)(B), although all three of these options could be considered for the final rule. EPA is therefore soliciting comment on all three options. While today's action proposes no changes to the 2002 baseline year for areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS, we propose to reorganize § 93.119(e)(2) to clarify that 2002 applies only to areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS.

The existing interagency consultation process (40 CFR 93.105(c)(1)(i)) would be used to determine the latest assumptions and models for generating baseline year motor vehicle emissions to complete any baseline year test. The baseline year emissions level that is used in conformity would be required to be based on the latest planning assumptions available, the latest emissions model, and appropriate methods for estimating travel and speeds as required by 40 CFR 93.110, 93.111, and 93.122 of the current conformity rule. The baseline year test can be completed with a submitted or draft baseline year motor vehicle emissions SIP inventory, if the SIP reflects the latest information and models. If such a SIP baseline is not available, an MPO, in consultation with state and local air agencies, could also develop baseline year emissions as part of the conformity analysis.

C. Rationale

EPA believes that a more recent year than 2002 is appropriate for meeting Clean Air Act conformity requirements for 2006 $PM_{2.5}$ nonattainment areas. EPA also believes that using a more recent year than 2002 is required to meet these statutory requirements, and is more environmentally protective and relevant for the 2006 $PM_{2.5}$ NAAQS.

Coordinating the conformity baseline year with the year used for SIP planning and an emission inventory year was EPA's rationale for using 2002 as the baseline year for conformity tests in existing $PM_{2.5}$ nonattainment areas for the 1997 NAAQS. As described in the July 1, 2004 final rule (69 FR 40015), EPA selected 2002 as the conformity baseline year because 2002 was identified as the anticipated emission inventory base year for the SIP planning process under the 1997 $PM_{2.5}$ NAAQS.[7] EPA continues to believe that coordinating the conformity's baseline with other data collection and inventory requirements would allow state and local governments to use their resources more efficiently. However, for the 2006 $PM_{2.5}$ nonattainment areas, the year 2002 does not have the same relevance and does not provide the same level of environmental protection as a more recent year.

[7] Also, the AERR requires submission of point, nonpoint, and mobile source emissions inventories every three years, and 2002 was one of those required years for such updates.

In choosing the baseline year for the 2006 $PM_{2.5}$ NAAQS, EPA also believes it could be important to coordinate the conformity rule's baseline year with the year ultimately used as a baseline for SIP planning for the 2006 $PM_{2.5}$ NAAQS as well as other emissions inventory requirements. EPA has proposed 2008 as a baseline year for conformity purposes (Option 1) and believes such an option would be appropriate to meet Clean Air Act conformity requirements. EPA selected 2002 for the baseline year tests in 1997 8-hour ozone and $PM_{2.5}$ nonattainment areas in the July 1, 2004 final rule (69 FR 40015) not only because EPA believed that 2002 was the most appropriate measure for meeting Clean Air Act conformity requirements not to worsen air quality or delay timely attainment or achievement of any required interim milestone prior to SIP budgets being established, but also because EPA believed it was important to have transportation and air quality planning coordinated. Having consistent baseline years for SIPs, conformity determinations and other emissions inventory requirements helps to achieve this goal.

Alternatively, EPA has also proposed 2005 as a baseline year for conformity purposes (Option 3) because this year is also relevant for 2006 $PM_{2.5}$ areas. The year 2005 is more recent than 2002, and 2005 data would also be available for other inventory purposes such as the AERR. In addition, most 2006 $PM_{2.5}$ areas will be designated nonattainment based in part on air quality monitoring data from the year 2005. EPA is required to make nonattainment designations for $PM_{2.5}$ based on the most recent three years of air quality data, *i.e.*, 2005–2007 data for most 2006 $PM_{2.5}$ areas. For this reason, 2005 is being proposed as a baseline year for conformity purposes.

Whereas Options 1 and 3 would apply specifically to the 2006 $PM_{2.5}$ NAAQS, EPA proposes in Option 2 to generalize the language for the baseline year for areas designated under any $PM_{2.5}$ NAAQS established after 1997. Given that the Clean Air Act requires EPA to review the NAAQS for possible revision once every five years, adopting Option 2 would standardize the process for selecting an appropriate baseline year to use in meeting conformity requirements before SIP budgets have been established for any future $PM_{2.5}$ NAAQS. This would enable EPA, MPOs and other transportation planners to identify the appropriate baseline year for conformity purposes without EPA having to amend the conformity regulation first.

In other words, Option 2 would allow EPA to identify an appropriate baseline

year in an expeditious manner for transportation conformity purposes. As a result, MPOs and other transportation planners would understand conformity requirements for future $PM_{2.5}$ NAAQS revisions more quickly, which may, in turn, also allow more time to prepare and complete necessary conformity determinations.

EPA believes that Option 2 would result in an appropriate baseline year for a given $PM_{2.5}$ NAAQS. Since Option 2 is based on the same criteria that have been used for proposed Option 1 and for establishing baseline years for other NAAQS (58 FR 62191, 69 FR 40014), EPA believes this option would also result in an environmentally protective and legal baseline year for conformity under the 2006 $PM_{2.5}$ NAAQS and any future $PM_{2.5}$ NAAQS revisions. Finalizing Option 2 would most likely result in a baseline year of 2008 for the 2006 $PM_{2.5}$ NAAQS.

If the regulatory text for this option referred to the AERR requirement, the option would ensure that areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS, as well as areas designated for revised $PM_{2.5}$ NAAQS in the future, would use the year for which the most recent emissions inventories are *required* to be submitted as of the effective date of EPA's final designations. The regulatory text for Option 2 could also be written to refer to the year that will be used as the baseline year for SIP development for a given $PM_{2.5}$ NAAQS.

In either case, under Option 2 EPA would most likely clarify what year is to be used for the baseline year test by issuing a memorandum. If this option were finalized, EPA would issue such a memorandum prior to conformity requirements applying.

EPA requests comment on all of these options. Though commenters can simply express a preference, providing rationale for a preference is especially useful to EPA. In particular, EPA seeks comment on whether state and local agencies believe that establishing the baseline year using Option 2 presents any implementation concerns, and if so, how EPA could address such concerns.

V. Regional Conformity Tests in 2006 $PM_{2.5}$ Nonattainment Areas That Do Not Have Adequate or Approved SIP Budgets for the 1997 $PM_{2.5}$ NAAQS

This part of the proposal discusses regional conformity tests for nonattainment areas for the 2006 $PM_{2.5}$ NAAQS that do not have adequate or approved $PM_{2.5}$ SIP budgets for the 1997 NAAQS. This proposal would apply to 2006 $PM_{2.5}$ nonattainment areas that were not covered by the 1997 $PM_{2.5}$ NAAQS, as well as nonattainment areas for both $PM_{2.5}$ NAAQS that do not have an adequate or approved 1997 $PM_{2.5}$ SIP budget. EPA would address conformity tests for these areas under proposed section 93.109(j) of the conformity rule. See Section VI. of today's proposal for conformity tests in 2006 $PM_{2.5}$ areas that have adequate or approved SIP budgets for the 1997 $PM_{2.5}$ NAAQS.

Note that this section of the preamble proposes new requirements for conformity only under the 2006 $PM_{2.5}$ NAAQS. This proposal does not address the requirements for demonstrating conformity for the 1997 $PM_{2.5}$ NAAQS.

A. Conformity After 2006 $PM_{2.5}$ SIP Budgets Are Adequate or Approved

1. Proposal

Once a SIP for the 2006 $PM_{2.5}$ NAAQS is submitted with a budget(s) that EPA has found adequate or approved, EPA proposes that the budget test must be used in accordance with 40 CFR 93.118 to complete all applicable regional emissions analyses for the 2006 $PM_{2.5}$ NAAQS. Conformity would be demonstrated if the transportation system emissions reflecting the proposed transportation plan, TIP, or project not from a conforming transportation plan and TIP were less than or equal to the motor vehicle emissions budget level defined by the SIP as being consistent with Clean Air Act requirements.

The first SIP for the 2006 $PM_{2.5}$ NAAQS could be a control strategy SIP required by the Clean Air Act (*i.e.,* reasonable further progress SIP or attainment demonstration) or a maintenance plan. States could also voluntarily choose to submit an ''early progress SIP'' prior to required SIP submissions. Early progress SIPs must demonstrate a significant level of future emissions reductions from a previous year's emissions. For example, an area could submit an early progress SIP for the 2006 $PM_{2.5}$ NAAQS that demonstrates a specific percentage of emissions reductions (*e.g.*, 5–10%) in an area's attainment year from the baseline year emissions (*e.g.*, 2008). An early progress SIP would include emissions inventories for all emissions sources for the entire 2006 $PM_{2.5}$ nonattainment area and would meet applicable requirements for reasonable further progress SIPs. EPA has discussed this option in past conformity rule preambles, *e.g.*, the July 1, 2004 transportation conformity final rule (69 FR 40028), and many states have established early progress SIP budgets for conformity purposes.

Whatever the case, the interim emissions test(s) would no longer be used for direct $PM_{2.5}$ or a relevant precursor once an adequate or approved SIP budget for the 2006 $PM_{2.5}$ NAAQS is established for the pollutant or precursor. EPA encourages states to develop their future 2006 $PM_{2.5}$ SIPs in consultation with MPOs, state and local transportation agencies, and local air quality agencies to facilitate future conformity determinations. Once EPA's nonattainment designations are finalized, EPA Regions would be available to assist states in the development of early progress SIPs for the 2006 $PM_{2.5}$ NAAQS, if desired.

2. Rationale

EPA believes that this proposal meets statutory requirements for conformity determinations that occur after SIP budgets are available for the 2006 $PM_{2.5}$ NAAQS. Section 176(c) of the Clean Air Act states that transportation activities must ''conform to an implementation plan * * * '' (SIP) and states further that conformity to an implementation plan means conformity to the SIP's purpose. Once EPA finds a budget for the 2006 $PM_{2.5}$ NAAQS adequate or approves the SIP that includes it, the budget test provides the best means to determine whether transportation plans and TIPs meet the statutory obligations in Clean Air Act sections 176(c)(1)(A) and (B) for that NAAQS. That is, the budget test best shows that transportation plans and TIPs conform to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of the NAAQS (176(c)(1)(A)); and best confirms the requirement that transportation plans and TIPs not cause or contribute to any new violation, worsen an existing violation, or delay timely attainment or any required interim milestone (176(c)(1)(B)). The budget test also best demonstrates that transportation plans and TIPs comply with the statutory obligation to be consistent with the emissions estimates in SIPs, according to Clean Air Act section 176(c)(2)(A). By being consistent with the on-road mobile source emissions levels in the SIP, transportation planners can ensure that their activities remain consistent with state and local air quality goals to protect public health.

B. Conformity Before 2006 $PM_{2.5}$ SIP Budgets Are Adequate or Approved

1. Proposal

EPA is proposing that these 2006 $PM_{2.5}$ nonattainment areas meet one of the following interim emissions tests for

conformity determinations conducted before adequate or approved 2006 24-hour $PM_{2.5}$ SIP budgets are established:

- The build-no-greater-than-no-build test (''build/no-build test''), or
- The no-greater-than-baseline year emissions test (''baseline year test'').

Again, this part of the proposal would apply only in cases where a 2006 $PM_{2.5}$ area does not have adequate or approved SIP budgets for either the 2006 or 1997 $PM_{2.5}$ NAAQS. Section VI. of the proposal covers the case where a 2006 $PM_{2.5}$ nonattainment area has a SIP budget for the 1997 $PM_{2.5}$ NAAQS.

This proposal is similar to the transportation conformity rule at 40 CFR 93.119(e) for nonattainment areas for the 1997 $PM_{2.5}$ NAAQS. Today's proposal would allow 2006 $PM_{2.5}$ nonattainment areas without SIP budgets to choose between the two interim emissions tests, rather than require that one specific test or both tests be completed. Conformity would be demonstrated under the proposal if the transportation emissions reflecting the proposed transportation plan or TIP (build) were less than or equal to either the emissions from the existing transportation system (no-build), or the level of motor vehicle emissions in the baseline year, as described in 40 CFR 93.119. A full discussion of the proposed baseline year options for the 2006 $PM_{2.5}$ NAAQS can be found in Section IV. of today's notice.

2. Rationale

EPA believes that this proposal meets statutory requirements for conformity determinations that occur before SIP budgets are available for the 2006 $PM_{2.5}$ NAAQS. EPA believes it is appropriate to provide flexibility and allow 2006 $PM_{2.5}$ areas to meet only one interim emissions test before adequate or approved $PM_{2.5}$ SIP budgets are established. This proposal meets statutory requirements and parallels the current rule's requirements for 1997 $PM_{2.5}$ nonattainment areas (69 FR 40028–40031), which were upheld by an October 2006 court decision. *Environmental Defense v. EPA, 467 F.3d 1329 (DC Cir. 2006).*[8] In addition, this proposal is consistent with past rulemakings for interim emissions test requirements for other pollutants, as described below.

Using either the build/no-build test or baseline year test is sufficient to meet Clean Air Act section 176(c)(1)(B) requirements that transportation activities do not cause new air quality violations, worsen existing violations, or delay timely attainment or achievement of interim reductions or milestones. The baseline year and the build/no-build tests are sufficient for demonstrating conformity when an area does not have a SIP budget for a portion of a nonattainment area.

Based on the Clean Air Act, EPA has previously determined that only ozone and CO areas of higher classifications[9] are required to also satisfy section 176(c)(3)(A)(iii) requirements during the time period before adequate or approved SIP budgets are available (58 FR 3782–3783; 62 FR 43784–43785; 69 FR 40018, 40019–40031). As a result, the current rule requires these ozone and CO areas to meet both interim emissions tests, rather than only one test.

However, the current conformity rule already allows areas designated for the other pollutants, as well as the lower classifications of ozone and CO, to conform based on only one interim emissions test, rather than having to complete two tests and thereby contribute further reductions towards attainment. EPA proposes that the 2006 $PM_{2.5}$ areas also be required to meet only one of the interim emissions tests to meet the Clean Air Act's requirements in section 176(c)(1)(B). For more information and the full rationale for allowing some areas to conform based on only one interim emissions test, see the November 24, 1993 final rule (58 FR 62197) that addressed interim requirements for PM_{10} and NO_2 areas, and the July 1, 2004 final rule (69 FR 40029) that established interim requirements for 1997 $PM_{2.5}$ areas.

EPA believes that the no-greater-than-baseline year interim emissions test is an appropriate test for meeting section 176(c)(1)(B) requirements in 2006 $PM_{2.5}$ nonattainment areas. By definition, the no-greater-than baseline year test ensures that emissions from on-road mobile sources are no greater than they were during the baseline year that will most likely be used for 2006 $PM_{2.5}$ NAAQS SIP planning purposes. If future on-road emissions do not increase above their base year levels, applicable statutory requirements are met.

Finally, the build/no-build test would also allow a 2006 $PM_{2.5}$ area to meet statutory requirements. As described above, the build/no-build test requires a regional emissions analysis to demonstrate that the emissions from the transportation system in future years, if it included the proposed action and all other expected regionally significant projects, would be less than the emissions from the current transportation system in future years. Since a new transportation plan, TIP, or project (in the build scenario) could not result in regional emissions that are higher than those that would occur in the absence of new transportation activities (in the no-build scenario) for the system, the Clean Air Act section 176(c)(1)(B) requirements are met. For these reasons, EPA believes that the build/no-build test continues to be an appropriate interim test prior to SIP budgets being available.

C. General Implementation of Regional Tests

This proposal would apply the existing conformity rule's general requirements for $PM_{2.5}$ regional emissions analyses in 2006 $PM_{2.5}$ areas that do not have adequate or approved SIP budgets for the 1997 $PM_{2.5}$ NAAQS. EPA is including this discussion of the existing regulation's requirements for clarity, to help readers understand how the existing regulation would apply to areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS. However, EPA is not soliciting comment on these existing requirements that we are not proposing to change. The following examples are intended to illustrate how today's proposal would be implemented in practice for 2006 $PM_{2.5}$ areas without adequate or approved 1997 $PM_{2.5}$ SIP budgets.

1. Decisions Made Through the Interagency Consultation Process

The existing rule's consultation process would be used to determine the test for completing any regional emissions analysis for the 2006 $PM_{2.5}$ NAAQS, as required by 40 CFR 93.105(c)(1)(i). The existing interagency consultation process would also be used to determine the latest assumptions and models for generating motor vehicle emissions regardless of the test used. Refer to Section IV. of this preamble for details about generating baseline year emissions if that interim emissions test is selected for a given conformity determination.

The consultation process would also be used to determine which analysis

[8] Petitioners challenged several aspects of the conformity regulations. In its decision, the U.S. Court of Appeals for the District of Columbia Circuit upheld EPA's regulations at 40 CFR 93.119(b)(2), (d), and (e) ''because the Act does not require that activities involving transportation actually reduce pollutants, but merely not frustrate an implementation plan's purpose to reduce overall emissions.'' The court also upheld EPA's regulations at 40 CFR 93.118(b), (d), and (e)(6). The court vacated a narrow provision at 40 CFR 93.109(e)(2)(v) which had allowed 8-hour ozone areas to avoid using their existing 1-hour budgets under certain circumstances. This provision was removed from the transportation conformity regulation in the January 24, 2008 final rule.

[9] That is, ozone areas classified as moderate and above, and CO areas classified as moderate with design value greater than 12.7 ppm and serious.

years should be selected for regional emissions analyses. Before an adequate or approved 2006 $PM_{2.5}$ budget is available, areas would be able to choose, through interagency consultation, either interim emissions test for each conformity determination. However, the same test would be required to be used for each analysis year for a given determination. EPA believes that sufficient flexibility exists without mixing and matching interim emissions tests for different analysis years within one conformity determination, which is unnecessarily complicated and may indicate that an area would not conform using one test consistently.

2. General Conformity Test Requirements for All Areas

Regional emissions analyses under this proposal would be implemented through existing conformity requirements such as 40 CFR 93.118, 93.119, and 93.122. For example, the existing conformity rule requires that only certain years within the transportation plan (or alternate timeframe) be examined. Under 40 CFR 93.118(d), the following years would be analyzed for the budget test with 2006 $PM_{2.5}$ SIP budgets:

- The attainment year for the 2006 $PM_{2.5}$ NAAQS (if it is within the timeframe of the transportation plan and conformity determination);
- The last year of the timeframe of the conformity determination (40 CFR 93.106(d)); and
- Intermediate years as necessary so that analysis years are no more than ten years apart.

For the interim emissions tests, the existing conformity rule (40 CFR 93.119(g)) requires the following analysis years:

- A year no more than five years beyond the year in which the conformity determination is being made;
- The last year of the timeframe of the conformity determination (as described in 40 CFR 93.106(d));
- Intermediate years as necessary so that analysis years are no more than 10 years apart.

See the relevant regulatory sections of the conformity rule and the July 1, 2004 final rule preamble for further background on how tests have been implemented for other pollutants and standards (69 FR 40020).

3. Cases Involving Multi-Jurisdictional Areas

In July 2004, EPA issued a guidance document for implementing conformity requirements in multi-jurisdictional areas.[10] Multi-jurisdictional areas are nonattainment and maintenance areas with multiple MPOs, one or more MPOs and a donut area, or multi-state areas. EPA believes that this guidance should also apply to 2006 $PM_{2.5}$ areas with multiple jurisdictions.

There are two parts of this existing guidance that are most relevant for implementing conformity for multi-jurisdictional 2006 $PM_{2.5}$ areas that do not have adequate or approved 1997 $PM_{2.5}$ SIP budgets. Part 2 of this guidance describes how conformity would be implemented in all 2006 $PM_{2.5}$ areas before adequate or approved SIP budgets are available for an applicable NAAQS. Part 3 of this guidance is relevant for meeting conformity requirements once adequate or approved 2006 $PM_{2.5}$ SIP budgets are available. For example, Part 3 of this guidance describes how a state or MPO in a multi-state nonattainment area can operate independently from other states/MPOs for conformity purposes once adequate or approved SIP budgets for a state are established. This same conformity guidance would also apply for the 2006 $PM_{2.5}$ NAAQS in these types of areas. Part 3 would also apply to the cases where subarea budgets are established for a nonattainment area within one state with multiple MPOs. For further information, please refer to EPA's 2004 multi-jurisdictional conformity guidance.

VI. Regional Conformity Tests in 2006 $PM_{2.5}$ Areas That Have Adequate or Approved 1997 $PM_{2.5}$ SIP Budgets

This section proposes the conformity tests for completing regional emissions analyses in areas designated for the 2006 $PM_{2.5}$ NAAQS with adequate or approved SIP budgets for the 1997 $PM_{2.5}$ NAAQS that cover either part or all of the 2006 $PM_{2.5}$ area. EPA proposes to address conformity tests for these areas under a new section 93.109(k). See Section V. of today's proposal for conformity tests in 2006 $PM_{2.5}$ areas that do not have an adequate or approved 1997 $PM_{2.5}$ SIP budget. As stated elsewhere, EPA is not proposing any changes in conformity requirements for the 1997 $PM_{2.5}$ NAAQS.

A. Conformity After 2006 $PM_{2.5}$ SIP Budgets Are Adequate or Approved

1. Proposal

Once a SIP for the 2006 $PM_{2.5}$ NAAQS is submitted with budget(s) that EPA has found adequate or approved, EPA proposes that the budget test must be used in accordance with 40 CFR 93.118 to complete all applicable regional emissions analyses for the 2006 $PM_{2.5}$ NAAQS. Conformity would be demonstrated if the transportation system emissions reflecting the proposed transportation plan, TIP, or project not from a conforming transportation plan and TIP were less than or equal to the motor vehicle emissions budget level defined by the SIP as being consistent with Clean Air Act requirements.

The first submitted SIP for the 2006 $PM_{2.5}$ NAAQS may be an attainment demonstration or a maintenance plan. Nonattainment areas for the 2006 $PM_{2.5}$ NAAQS could also voluntarily choose to submit an ''early progress SIP'' to establish budgets for conformity purposes prior to required SIPs. See Section V. for further details on requirements for early progress SIPs. EPA has discussed this option in past conformity rule preamble, *e.g.*, the July 1, 2004 transportation conformity final rule (69 FR 40028), and some states have established early progress SIP budgets for conformity purposes.

Whatever the case, interim emissions tests and/or any existing 1997 $PM_{2.5}$ SIP budget would no longer be used for conformity in 2006 $PM_{2.5}$ areas for direct $PM_{2.5}$ or a relevant precursor once an adequate or approved SIP budget for the 2006 $PM_{2.5}$ NAAQS is established for the pollutant or precursor. Once a SIP budget for the 2006 $PM_{2.5}$ NAAQS is adequate or approved, the budget test for 2006 $PM_{2.5}$ conformity would be done based on 24-hour emissions (*i.e.*, tons per day). As noted earlier in Section III.D., areas that were also designated for the 1997 $PM_{2.5}$ NAAQS would continue to meet their existing conformity requirements for the 1997 $PM_{2.5}$ NAAQS, which would include a regional emissions analysis based on annual emissions (*i.e.*, tons per year). The conformity rule at 40 CFR 93.105 requires consultation on the development of SIPs; EPA encourages states to consult with MPOs, state and local transportation agencies, and local air quality agencies sufficiently early when developing 2006 $PM_{2.5}$ SIPs to facilitate future conformity determinations. Once EPA's nonattainment designations are finalized, EPA Regions would be available to assist states in developing

[10] ''Companion Guidance for the July 1, 2004, Final Transportation Conformity Rule: Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standard,'' EPA40–B–04–012, July 2004, found on EPA's Web site at *http://www.epa.gov/otaq/stateresources/transconf/policy/420b04012.pdf.*

early progress SIPs for the 2006 $PM_{2.5}$ NAAQS, if desired.

2. Rationale

EPA's rationale for the use of the budget test once adequate or approved SIP budgets addressing the 2006 $PM_{2.5}$ NAAQS are available is found in Section V.A.2. of this preamble, and not repeated here.

B. Conformity Before 2006 $PM_{2.5}$ SIP Budgets Are Adequate or Approved

1. Proposal

Where all or a portion of the 2006 $PM_{2.5}$ area is covered by adequate or approved 1997 $PM_{2.5}$ budgets, EPA is proposing that the 1997 budgets would be used for 2006 $PM_{2.5}$ conformity. In addition, in the case where the 1997 budget does not cover the entire 2006 $PM_{2.5}$ area, EPA is proposing that one of the interim emissions tests would also be used, as described below. Section IV. of this proposal covers the proposed change to the baseline year test and Section V. covers interim emissions tests in 2006 $PM_{2.5}$ areas before adequate or approved SIP budgets for the 2006 $PM_{2.5}$ NAAQS are available.

Please note that this proposal is for completing conformity under the 2006 $PM_{2.5}$ NAAQS before 2006 $PM_{2.5}$ SIP budgets are established. For areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS where all, or a portion, of the area is covered by adequate or approved 1997 $PM_{2.5}$ SIP budgets, EPA is proposing that the budget test using 1997 $PM_{2.5}$ SIP budgets serve as a proxy for the 2006 $PM_{2.5}$ NAAQS until 2006 $PM_{2.5}$ SIP budgets are available.

Many nonattainment areas for the 1997 $PM_{2.5}$ NAAQS may have adequate or approved SIP budgets for the 1997 annual $PM_{2.5}$ NAAQS. For areas that use annual $PM_{2.5}$ budgets to meet 2006 $PM_{2.5}$ requirements, a regional emissions analysis would be done based on an analysis of annual, rather than 24-hour, emissions (*i.e.*, tons per year).

Today's proposal is based on EPA's experience in establishing conformity requirements for areas designated for the 1997 8-hour ozone NAAQS that had SIP budgets for the 1-hour ozone NAAQS, found in 40 CFR 93.109(e)(2). This proposal covers the four possible scenarios that could result when areas are designated nonattainment for the 2006 $PM_{2.5}$ NAAQS: [11]

- *Scenario 1:* The 2006 $PM_{2.5}$ area nonattainment boundary is the same as the 1997 $PM_{2.5}$ area boundary.
- *Scenario 2:* The 2006 $PM_{2.5}$ area is smaller than (and completely within) the 1997 $PM_{2.5}$ area boundary.
- *Scenario 3:* The 2006 $PM_{2.5}$ area is larger than (and contains) the 1997 $PM_{2.5}$ area boundary.
- *Scenario 4:* The 2006 $PM_{2.5}$ area boundary overlaps with a portion of the 1997 $PM_{2.5}$ area boundary.

These four boundary scenarios are the same as the four boundary scenarios EPA described for the 1997 8-hour ozone areas that had existing 1-hour ozone budgets. EPA's 2004 guidance entitled, ''Companion Guidance for the July 1, 2004 Final Transportation Conformity Rule, Conformity Implementation in Multi-Jurisdictional Nonattainment and Maintenance Areas for Existing and New Air Quality Standards,'' (EPA40–B–04–012), contains diagrams of the four scenarios for 8-hour ozone areas. Readers may be interested in reviewing these diagrams as they consider the following proposals. This document can be found on EPA's transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy/420b04012.pdf.*

The following paragraphs describe today's proposals for each possible scenario for 2006 $PM_{2.5}$ nonattainment areas.

Scenario 1: 2006 $PM_{2.5}$ areas where the nonattainment boundary is exactly the same as the 1997 $PM_{2.5}$ boundary. In this case, the 2006 and 1997 $PM_{2.5}$ nonattainment boundaries cover exactly the same geographic area. EPA proposes to require such areas to meet the budget test for the 2006 $PM_{2.5}$ NAAQS using existing adequate or approved SIP budgets for the 1997 $PM_{2.5}$ NAAQS.

Scenario 2: 2006 $PM_{2.5}$ areas where the boundary is smaller than and within the 1997 $PM_{2.5}$ boundary. In this case, the 2006 $PM_{2.5}$ nonattainment area is smaller than and completely encompassed by the 1997 $PM_{2.5}$ nonattainment boundary. EPA proposes to require such areas to meet one of the following versions of the budget test:

- The budget test using the subset or portion of existing adequate or approved 1997 $PM_{2.5}$ SIP budgets that applies to the 2006 $PM_{2.5}$ nonattainment area, where such portion(s) can be appropriately identified; or
- The budget test using the existing adequate or approved 1997 $PM_{2.5}$ SIP budgets for the entire 1997 $PM_{2.5}$ nonattainment area. In this case, any additional reductions beyond those addressed by control measures in the 1997 $PM_{2.5}$ SIP would be required to come from the 2006 $PM_{2.5}$ nonattainment area as described below.

Under today's proposal, areas could choose either test each time they make a conformity determination. For any particular conformity determination, however, the same choice would have to be used for each analysis year. EPA believes that to do otherwise would be unnecessarily complicated and may indicate that one test option used consistently for all analysis years would not demonstrate conformity. The consultation process would be used to determine whether using a portion of a 1997 $PM_{2.5}$ SIP budget is appropriate and feasible, and if so, how deriving such a portion would be accomplished. See the preamble of the July 1, 2004 final rule (69 FR 40022–40023) for a description of a similar provision for the 1997 8-hour ozone NAAQS.

EPA is proposing that a conformity determination using the entire 1997 $PM_{2.5}$ budget would include a comparison between the on-road regional emissions produced in the entire 1997 $PM_{2.5}$ area and the existing 1997 $PM_{2.5}$ SIP budget(s). However, if additional reductions are required to meet conformity beyond those produced by control measures in the 1997 $PM_{2.5}$ SIP budgets, EPA proposes that those reductions must be obtained from within the 2006 $PM_{2.5}$ nonattainment area only, since the conformity determination would be for the 2006 $PM_{2.5}$ NAAQS.

Scenario 3: 2006 $PM_{2.5}$ areas where the boundary is larger than the 1997 $PM_{2.5}$ boundary. In this case, an entire 1997 $PM_{2.5}$ nonattainment or maintenance area would be within a larger 2006 $PM_{2.5}$ nonattainment area and the 1997 $PM_{2.5}$ budgets would not cover the entire 2006 $PM_{2.5}$ nonattainment area. EPA proposes to require such areas to meet one of the following:

- The budget test using the 1997 $PM_{2.5}$ budget(s) for the 1997 $PM_{2.5}$ area, that is, the portion of the 2006 $PM_{2.5}$ area that lies within the 1997 $PM_{2.5}$ area boundary, and one of the interim emissions tests for either the remaining portion of the 2006 $PM_{2.5}$ nonattainment area, the entire 2006 $PM_{2.5}$ area, or the entire portion of the 2006 $PM_{2.5}$ area within an individual state, if 1997 $PM_{2.5}$ budgets are established in each state in a multi-state area; or
- The budget test using the existing adequate or approved 1997 $PM_{2.5}$ SIP budgets for the entire 2006 $PM_{2.5}$ nonattainment area.[12]

[11] Although all four scenarios are included in this proposal, most of the 2006 $PM_{2.5}$ areas that have 1997 $PM_{2.5}$ budgets will be Scenario 1 areas.

[12] While the existing regulation for 8-hour ozone areas does not explicitly contain this option, it was addressed in the preamble to the final rule addressing 8-hour ozone areas (July 1, 2004, 69 FR 40027).

Under this proposal, the budget test would be completed according to the requirements in 40 CFR 93.118, and the interim emissions test requirements of 40 CFR 93.119.

Once an area selects a particular interim emissions test and the geographic area it will address, EPA proposes that the same test must be used consistently for all analysis years. The consultation process would have to be used to determine which analysis years should be selected for regional emissions analyses where the budget test and interim emissions tests are used. It may be possible to choose analysis years that would satisfy both the budget and interim emissions test requirements for areas using both tests prior to adequate or approved 2006 $PM_{2.5}$ SIP budgets being established. Further information regarding the implementation of these requirements is illustrated later in this section.

Scenario 4: 2006 $PM_{2.5}$ areas where the boundary partially overlaps a portion of the 1997 $PM_{2.5}$ boundary. In this case, the 1997 and 2006 $PM_{2.5}$ nonattainment boundaries partially overlap. As in the case with Scenario 3 areas, the 1997 $PM_{2.5}$ budgets would not cover the entire 2006 $PM_{2.5}$ nonattainment area. However, unlike Scenario 3 areas, the 2006 area does not contain the entire 1997 $PM_{2.5}$ nonattainment or maintenance area. Therefore, 1997 $PM_{2.5}$ budgets cannot be the sole test of conformity for the 2006 $PM_{2.5}$ NAAQS, since a conformity determination must include a regional emissions analysis that includes the entire 2006 $PM_{2.5}$ nonattainment area.

EPA proposes that 2006 $PM_{2.5}$ areas covered under this scenario would use the 1997 $PM_{2.5}$ budget(s) to meet the budget test for the portion of the 1997 $PM_{2.5}$ area and budgets that overlap with the 2006 $PM_{2.5}$ area boundary, and one of the interim emissions tests for either the remaining portion of the 2006 $PM_{2.5}$ nonattainment area, the entire 2006 $PM_{2.5}$ area, or the entire portion of the 2006 $PM_{2.5}$ area within an individual state, if 1997 $PM_{2.5}$ budgets are established in each state in a multi-state area. Under this proposal, the budget test would be completed according to the requirements in 40 CFR 93.118, and the interim emissions test requirements of 40 CFR 93.119.

Similar to Scenario 3 areas, once an area selects a particular interim emissions test and the geographic area it will address, EPA proposes that the same test must be used consistently for all analysis years. Further information regarding the implementation of these requirements is found in the discussion above for Scenario 3, and illustrated later in this section.

2. Rationale

General. EPA believes that using the existing 1997 $PM_{2.5}$ budgets as a proxy for the 2006 $PM_{2.5}$ NAAQS is required by the Clean Air Act. In *Environmental Defense* v. *EPA,* 467 F.3d 1329 (DC Cir. 2006), the Court of Appeals for the District of Columbia Circuit held that where a motor vehicle emissions budget developed for the revoked 1-hour ozone NAAQS existed in an approved SIP, that budget must be used to demonstrate conformity to the 8-hour ozone NAAQS until the SIP is revised to include budgets for the new NAAQS. EPA reflected the court's decision for ozone conformity tests in its January 24, 2008 final rule (73 FR 4434).

While the *Environmental Defense* case concerned ozone, EPA believes the court's holding is relevant for other pollutants for which conformity must be demonstrated. Consequently, EPA believes that 2006 $PM_{2.5}$ areas that have 1997 $PM_{2.5}$ budgets must use them for 2006 $PM_{2.5}$ conformity before 2006 $PM_{2.5}$ SIP budgets are established.

The use of the 1997 $PM_{2.5}$ budgets as a proxy for the 2006 $PM_{2.5}$ NAAQS also would ensure that Clean Air Act requirements are met. Section 176(c) of the Clean Air Act requires that transportation activities may not cause new violations, increase the frequency or severity of existing violations, or delay timely attainment. In these areas, the budgets for the 1997 annual $PM_{2.5}$ NAAQS have been the measure of $PM_{2.5}$ conformity thus far, and have been consistent with these areas' $PM_{2.5}$ air quality progress to date. Therefore, using budgets that address the 1997 annual $PM_{2.5}$ NAAQS where no other $PM_{2.5}$ budgets are available ensures that the requirements of Clean Air Act 176(c) are met. Once 2006 $PM_{2.5}$ budgets are found adequate or approved, the budget test for that NAAQS provides the best means to determine whether transportation plans, TIPs, or projects meet Clean Air Act requirements.

EPA also believes the budget test is a better environmental measure than the interim emissions tests when SIP budgets for a pollutant or precursor are available. As EPA reiterated in its July 1, 2004 final rule (69 FR 40026), when motor vehicle emissions budgets have been established by SIPs, they provide a more relevant basis for conformity determinations than the interim emissions tests. EPA believes this is true even though in most cases the budgets established for the 1997 $PM_{2.5}$ NAAQS would address an annual rather than a 24-hour NAAQS. A 1997 $PM_{2.5}$ budget represents the state's best estimate of the level of permissible $PM_{2.5}$ emissions from the on-road transportation sector for a particular area. Such a budget is created based on local information for that particular area—its population, its estimated VMT and other travel data, its transit availability, its particular vehicle fleet, its local controls, and so forth. Hence EPA believes using budgets, designed for specific areas and based on information from those specific areas, is preferable to using either of the more generic interim emissions tests. The baseline year and the build/no-build tests are sufficient for demonstrating conformity when an area does not have a budget for a portion of a nonattainment area. However, these interim emissions tests usually do not ensure that transportation emissions promote progress for the NAAQS to the same extent that the use of motor vehicle emissions budgets do.

In addition, using the 1997 $PM_{2.5}$ budgets for 2006 $PM_{2.5}$ conformity purposes may also streamline the conformity process for areas designated nonattainment for both the 1997 and 2006 $PM_{2.5}$ NAAQS. These areas would already be using 1997 $PM_{2.5}$ budgets for conformity of that NAAQS. In areas where the 1997 and 2006 $PM_{2.5}$ nonattainment boundaries are the same (Scenario 1), today's proposal would result in having to meet only one type of test—the budget test—to demonstrate conformity for both the 1997 and 2006 NAAQS.

For multi-state 2006 $PM_{2.5}$ nonattainment areas, today's proposal would also preserve states' ability to do conformity independently from one another, if a state has already established budgets for its own state (and/or MPO(s)) for the 1997 $PM_{2.5}$ NAAQS. Further explanation and examples are given below in Section VI.C.

Scenario 1 and 2 areas. Today's proposal for conformity in 2006 $PM_{2.5}$ areas before budgets that address that NAAQS are available is largely consistent with the process that EPA finalized for 8-hour ozone areas designated under the 1997 ozone NAAQS where 1-hour ozone budgets exist (69 FR 40021–40028). Our proposals for Scenario 1 and 2 areas are identical to the final rule for these 8-hour ozone areas. Scenario 2 2006 $PM_{2.5}$ areas would also have the choice of adjusting the existing 1997 $PM_{2.5}$ budgets for the new geographical area. As we indicated in the November 5, 2003 proposed rule for the 8-hour ozone areas (68 FR 62702), using the relevant portion of existing budgets for purposes of conducting conformity

determinations for a different NAAQS of the same pollutant is appropriate since the budgets for the 1997 $PM_{2.5}$ NAAQS would only be used as a proxy for the 2006 $PM_{2.5}$ NAAQS. These 1997 $PM_{2.5}$ budgets still have to be met in the 1997 $PM_{2.5}$ areas.

Scenario 3 and 4 areas. Some Scenario 3 areas and all Scenario 4 areas would also have to meet one of the interim emissions tests, for either the portion of the 2006 $PM_{2.5}$ area not covered by the 1997 $PM_{2.5}$ SIP budgets, the entire $PM_{2.5}$ area, or the entire portion of the 2006 $PM_{2.5}$ area within an individual state. As explained in the November 2003 proposed rule for 8-hour ozone areas (68 FR 62702), in these cases budgets cannot be the sole test of conformity because a conformity determination must include a regional emissions analysis that covers the entire nonattainment area.

However, some Scenario 3 areas may be able to demonstrate conformity without an interim emissions test. For Scenario 3 $PM_{2.5}$ areas, EPA is proposing an option that similar 8-hour ozone areas also have: the entire larger, newly designated area could meet budgets established for the smaller, existing area. In the July 1, 2004 final rule, EPA clarified that 8-hour ozone areas have this ability. In that final rule, EPA noted that while this option was not explicitly addressed by the regulatory text, it would be consistent with the requirements and is available to interested 8-hour ozone areas (69 FR 40027). Given the benefit of that history, EPA is proposing to adopt regulatory text for this option for Scenario 3 2006 $PM_{2.5}$ areas.

Finally, EPA believes that statutory requirements are met under the proposal to use either interim emissions test when no adequate or approved $PM_{2.5}$ SIP budgets are available. See further rationale regarding the flexibility offered by today's proposal in Section V.

C. General Implementation of Regional Tests

This proposal would apply the existing conformity rule's general requirements for $PM_{2.5}$ regional emissions analyses to all 2006 $PM_{2.5}$ areas. As described in Section V.C., EPA is including this discussion of the existing regulation's requirements for clarity, to help readers understand how the existing regulation would apply to areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS. However, EPA is not soliciting comment on existing requirements that we are not proposing to change.

The following examples are intended to illustrate how today's proposal would be implemented in practice for 2006 $PM_{2.5}$ areas with adequate or approved 1997 $PM_{2.5}$ SIP budgets.

1. General Conformity Test Requirements for Most Areas

Regional emissions analyses under this proposal would be implemented through existing conformity requirements such as 40 CFR 93.118, 93.119, and 93.122. For example, the existing conformity rule requires that only certain years within the transportation plan (or alternate timeframe) be examined.

Although four scenarios are described in Section VI.B. for the time period before 2006 $PM_{2.5}$ SIP budgets are available, most areas with 1997 $PM_{2.5}$ SIP budgets will be covered by Scenario 1 (*i.e.,* the 1997 and 2006 $PM_{2.5}$ NAAQS boundaries are the same). Under Scenario 1, the consultation process would be used to determine which analysis years should be selected for regional emissions analyses for the budget test. The existing conformity rule at 40 CFR 93.118(d) requires the following analysis years for this test:

- The attainment year for the 2006 $PM_{2.5}$ NAAQS (if it is within the timeframe of the transportation plan and conformity determination);
- The last year of the timeframe of the conformity determination (40 CFR 93.106(d)); and
- Intermediate years as necessary so that analysis years are no more than 10 years apart.

Areas covered by this proposal would also be determining conformity for the 1997 $PM_{2.5}$ NAAQS, using adequate or approved budgets established for that NAAQS.

See the relevant regulatory sections of the conformity rule and the July 1, 2004 final rule preamble for further background on how tests have been implemented for other pollutants and standards (69 FR 40020).

2. Cases Involving Multi-Jurisdictional Areas

As described earlier, EPA issued a guidance document in 2004 for implementing conformity requirements in multi-jurisdictional areas. There are two parts of this existing guidance that are relevant for implementing conformity for these areas. Part 3 of the existing guidance describes how conformity would be implemented in all 2006 $PM_{2.5}$ areas once adequate or approved SIP budgets for the 2006 $PM_{2.5}$ NAAQS are established. Part 4 of this guidance is relevant for meeting conformity requirements when only 1997 $PM_{2.5}$ budgets are available.[13]

This guidance is also applicable for conformity purposes in multi-state and multi-MPO areas. For example, in multi-state 2006 $PM_{2.5}$ nonattainment areas where each state has its own 1997 $PM_{2.5}$ SIP budgets, the states could do conformity for the 2006 NAAQS (as well as the 1997 $PM_{2.5}$ NAAQS) independently of each other. In addition, MPOs in areas that have subarea budgets for the 1997 $PM_{2.5}$ NAAQS could use these subarea budgets for conformity to the 2006 $PM_{2.5}$ NAAQS.

For further information, please refer to Section V.C. and EPA's 2004 multi-jurisdictional conformity guidance.

VII. Other Conformity Requirements for 2006 $PM_{2.5}$ Areas

The existing regulations already provide the remaining requirements that will be necessary for conformity under the 2006 $PM_{2.5}$ NAAQS. EPA believes that any existing conformity requirements that are listed for ''$PM_{2.5}$'' areas that are not being revised in today's proposal would also apply to 2006 $PM_{2.5}$ nonattainment or maintenance areas. These provisions have already been promulgated, based on past rulemakings and rationale, and EPA is not proposing any changes to these provisions. Therefore, EPA is not requesting public comment on these provisions in today's proposal.

For example, a hot-spot analysis is required for certain projects in any $PM_{2.5}$ nonattainment and maintenance areas before such projects can be found to conform. These requirements are found in §§ 93.116(a) and § 93.123(b) of the current conformity rule, although please note that EPA, for other reasons, is proposing today to clarify amendments to section 93.116(a) of the conformity rule. See Section IX. of this preamble for details. Any hot-spot analysis requirements that were promulgated for ''$PM_{2.5}$'' areas in the conformity rule do not need to be amended because they would already apply to 2006 $PM_{2.5}$ areas for this NAAQS.

A hot-spot analysis in an area designated for both the 1997 and 2006 $PM_{2.5}$ NAAQS would have to demonstrate that the project meets the conformity rule's hot-spot requirements for all of the $PM_{2.5}$ standards for which the area is designated nonattainment.

[13] This section of the guidance covers how 8-hour ozone areas that have 1-hour ozone budgets would proceed with developing their regional emissions analyses and making conformity determinations, which is analogous to any 2006 $PM_{2.5}$ areas that have 1997 budgets in the interim.

For example, if an area is designated nonattainment for the 1997 annual standard, and the 2006 24-hour standard, the analysis would have to consider both standards. Similarly, in the case where an area is designated nonattainment for both the 1997 annual and 24-hour standards, as well as the 2006 24-hour standard, the analysis would have to consider all of these standards. (See Section IX. for more information regarding the requirements of hot-spot analyses.)

Please refer to the March 10, 2006 final rule for additional information regarding hot-spot analyses (47 FR 12468) and EPA and FHWA's current guidance for implementing this requirement (Transportation Conformity Guidance for Qualitative Hot-spot Analyses in $PM_{2.5}$ and PM_{10} Nonattainment and Maintenance Areas, March 2006, EPA420–B–06–902).

Section 93.117 of the conformity rule, which requires project-level conformity determinations to comply with any $PM_{2.5}$ control measures in an approved SIP, would also apply for conformity under the 2006 $PM_{2.5}$ NAAQS. Again, EPA promulgated this requirement in general for nonattainment and maintenance areas under $PM_{2.5}$ air quality NAAQS. Therefore, EPA is not reopening this provision for comment in today's proposal, since it is unnecessary to do so in order to implement conformity requirements under the 2006 $PM_{2.5}$ NAAQS. See EPA's July 2004 final rule for further information on this requirement (69 FR 40036–40037).

EPA will work with $PM_{2.5}$ nonattainment areas as needed to ensure that state and local agencies can meet existing and new conformity requirements for the 2006 $PM_{2.5}$ NAAQS in a timely and efficient manner. EPA requests comment on whether additional information or training will be necessary to ensure proper conformity implementation under the existing rule and today's proposal for the 2006 $PM_{2.5}$ NAAQS. If your agency submits comments, please be as specific as possible regarding what types of situations and issues may need to be addressed in future implementation of $PM_{2.5}$ conformity requirements.

VIII. Transportation Conformity in PM_{10} Nonattainment and Maintenance Areas and the Revocation of the Annual PM_{10} NAAQS

A. Background

On October 17, 2006, EPA issued a final rule establishing changes to the $PM_{2.5}$ and PM_{10} NAAQS (71 FR 61144). The October 2006 final rule retained the 24-hour PM_{10} NAAQS of 150 μg/m³, and revoked the annual PM_{10} NAAQS of 50 μg/m³. EPA made a commitment in this October 2006 final rule to provide information regarding how transportation conformity will be implemented under the revised PM_{10} NAAQS (71 FR 61215). To satisfy this commitment, EPA described which conformity tests would apply in PM_{10} nonattainment and maintenance areas (''PM_{10} areas'') in a guidance document.[14] Today's proposal to update the conformity rule also responds to this commitment.

Clean Air Act section 176(c)(5) requires conformity only in areas that are designated nonattainment or maintenance for a given pollutant and NAAQS. Therefore, transportation conformity has continued to apply to all PM_{10} nonattainment and maintenance areas because transportation conformity applies based on an area's status as a nonattainment or maintenance area, and PM_{10} designations were not affected by the October 2006 final rule. As stated in the October 2006 final rule, ''both transportation and general conformity will continue to apply to all PM_{10} nonattainment and maintenance areas since no designations are changing'' (71 FR 61215).

As of the effective date of the October 2006 rule, conformity determinations in PM_{10} areas have been required only for the 24-hour PM_{10} NAAQS. The October 2006 final rule stated, ''However, because EPA is revoking the annual PM_{10} NAAQS in this final rule, after the effective date of this rule conformity determinations in PM_{10} areas will only be required for the 24-hour PM_{10} NAAQS; conformity to the annual PM_{10} NAAQS will no longer be required'' (71 FR 61215). Please refer to the October 17, 2006 final rule for additional information (71 FR 61144).

B. Proposed Definitions for PM_{10} NAAQS

EPA proposes to add new definitions to 40 CFR 93.101 of the conformity rule to distinguish between the 24-hour PM_{10} NAAQS and the annual PM_{10} NAAQS. EPA is proposing these two definitions to simplify the changes necessary for other conformity rule provisions, as described further below. The addition of these definitions parallels the existing definitions in 40 CFR 93.101 for the 1-hour ozone NAAQS and 8-hour ozone NAAQS.

C. Proposal for Conformity Tests in PM_{10} Areas With Budgets

EPA proposes to update one section of the regulation, consistent with the October 2006 final rule and the September 25, 2008 guidance entitled, ''Transportation Conformity in PM_{10} Nonattainment and Maintenance Areas and the Revocation of the Annual PM_{10} NAAQS.'' This proposal would be consistent with how PM_{10} transportation conformity requirements have been applied since the revocation of the annual PM_{10} NAAQS was effective.

Specifically, EPA is proposing to update 40 CFR 93.109(g) so that:

- PM_{10} areas that have adequate or approved SIP budgets for both the 24-hour and annual PM_{10} NAAQS would be required to use only the budgets established for the 24-hour PM_{10} NAAQS. Conformity to the annual PM_{10} budgets in such a case would no longer be required.[15]
- PM_{10} areas that have adequate or approved SIP budgets for only the annual PM_{10} NAAQS would be required to use them for PM_{10} conformity determinations until PM_{10} SIP budgets for the 24-hour PM_{10} NAAQS are found adequate or approved. For areas that use annual PM_{10} budgets, a regional emissions analysis would be done based on an analysis of annual, rather than 24-hour, emissions.

EPA is not proposing to change any other existing conformity requirements for PM_{10} nonattainment and maintenance areas. For example, the existing requirement for project-level conformity determinations in PM_{10} areas would also continue to apply, including hot-spot analyses in some cases (see §§ 93.116(a) and 93.123(b)). Although project-level conformity requirements and any required hot-spot analysis would apply only with respect to the 24-hour PM_{10} NAAQS, this requires no revisions to the current conformity rule.

D. Rationale

Today's proposed rule changes for PM_{10} conformity tests result from the revocation of the annual PM_{10} NAAQS. Where annual PM_{10} budgets are the only PM_{10} budgets, EPA believes it is necessary to use such budgets to demonstrate conformity for the 24-hour

[14] Transportation Conformity in PM_{10} Nonattainment and Maintenance Areas and the Revocation of the Annual PM_{10} Standard, September 25, 2008, found on EPA's Web site at: *http://www.epa.gov/otaq/stateresources/transconf/policy.htm.*

[15] Note that it would not be necessary to remove budgets established for the annual PM_{10} NAAQS from a SIP for conformity purposes; they do not apply if an area has budgets for the 24-hour PM_{10} NAAQS. However, states can choose to revise such SIPs to remove any annual PM_{10} budgets, since this standard has been revoked and remaining 24-hour PM_{10} budgets would ensure that anti-backsliding SIP requirements are met.

PM_{10} NAAQS to meet Clean Air Act requirements. As discussed above in Section VI.B.2., a 2006 decision by the Court of Appeals for the DC Circuit clarified this point. In this decision, the court stated, ''A current SIP, even one tied to outdated NAAQS, remains in force until replaced by another but later-approved SIP. The Clean Air Act provides that the current SIPs are legally sufficient until they are replaced by new SIPs.'' (*Environmental Defense* v. *EPA,* 467 F.3d 1329, 1335 (DC Cir. 2006)). Refer to Section VI.B.2. for further information about the decision. EPA believes that today's proposal is consistent with this decision.

Consequently, EPA believes that annual PM_{10} budgets must be used to demonstrate conformity for the 24-hour PM_{10} NAAQS when adequate or approved 24-hour PM_{10} budgets are not yet established. In areas with PM_{10} budgets that address only the annual PM_{10} NAAQS, these budgets have been the measure of PM_{10} conformity thus far, and have been consistent with these areas' PM_{10} air quality progress to date. Therefore, using annual PM_{10} budgets where no other PM_{10} SIP budgets are available ensures that air quality progress to date is maintained, air quality will not be worsened and attainment and any interim milestones for the 24-hour PM_{10} NAAQS will not be delayed because of emissions increases. Once 24-hour PM_{10} budgets are found adequate or approved, the budget test solely for the 24-hour PM_{10} NAAQS provides the best means to determine whether transportation plans, TIPs, or projects meet Clean Air Act conformity requirements.

Most PM_{10} areas already have adequate or approved budgets for only the 24-hour PM_{10} NAAQS. However, there are a limited number of PM_{10} areas that have SIP budgets only for the annual PM_{10} NAAQS. EPA believes that the statute as interpreted by the court requires such areas to continue to use these adequate or approved annual PM_{10} SIP budgets, rather than use one of the interim emissions tests in 40 CFR 93.119(d) which could be less environmentally protective tests than SIP budgets.

While EPA addressed how the revocation affected PM_{10} transportation conformity requirements in its September 2008 guidance, updating the regulation clarifies the requirements and simplifies implementation. This proposed rule also saves resources in some areas with adequate or approved SIP budgets for both the 24-hour and annual PM_{10} NAAQS because these areas are no longer required to use budgets for the annual PM_{10} NAAQS. As mentioned above, today's minor revision to the conformity rule is consistent with what is already required in the field for PM_{10} nonattainment and maintenance areas.

IX. Response to the December 2007 Hot-Spot Court Decision

A. Background

EPA promulgated a final rule on March 10, 2006 (71 FR 12468) that revised the previous PM_{10} conformity hot-spot analysis requirements and applied these revised requirements to $PM_{2.5}$.[16] A hot-spot analysis is defined in 40 CFR 93.101 as an estimation of likely future localized pollutant concentrations and a comparison of those concentrations to relevant NAAQS. A hot-spot analysis assesses the air quality impacts of an individual transportation project on a scale smaller than a regional emissions analysis for an entire nonattainment or maintenance area.

Section 93.116(a) of the current conformity rule requires that projects in $PM_{2.5}$, PM_{10}, and CO nonattainment and maintenance areas ''must not cause or contribute to any new localized CO, PM_{10}, and/or $PM_{2.5}$ violations or increase the frequency or severity of any existing CO, PM_{10}, and/or $PM_{2.5}$ violations* * *.'' This requirement is satisfied for applicable projects [17] ''if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.'' Sections 93.105(c)(1)(i) and 93.123 contain the consultation and methodology requirements for conducting hot-spot analyses.

A hot-spot analysis, when required, is only one part of a project-level conformity determination. In order to meet all Clean Air Act requirements, an individual project must also be included in a conforming transportation plan and TIP (and regional emissions analysis for the entire nonattainment or maintenance area) and meet any other applicable requirements.

Environmental petitioners challenged the March 2006 final rule, and raised several issues related to it. First, petitioners alleged that the final rule did not ensure that transportation projects complied with Clean Air Act section 176(c)(1)(A) and (c)(1)(B)(iii). Second, petitioners alleged that EPA had previously approved its MOBILE6.2 on-road mobile source emissions model for use in quantitative $PM_{2.5}$ and PM_{10} hot-spot analyses, and withdrew such approval in the March 2006 final rule without providing adequate notice and opportunity for public comment.[18]

On December 11, 2007, the DC Circuit Court of Appeals issued its decision, and upheld EPA's March 2006 final rule and remanded one issue for clarification. *Environmental Defense v. EPA,* 509 F.3d. 553 (DC Cir. 2007). The court agreed with EPA's position that Clean Air Act section 176(c)(1)(A) does not require that an individual transportation project reduce emissions, but only that such a project not worsen air quality compared to what would have otherwise occurred if the project was not implemented. The court held that, assuming section 176(c)(1)(A) applies in the local area surrounding an individual project, EPA's position that this provision is met if a transportation project conforms to the emissions estimates and control requirements of the SIP was a reasonable one. The court also rejected petitioners' arguments regarding MOBILE6.2 and found that EPA had in fact provided adequate notice and comment on its decision not to require quantitative PM hot-spot analyses using MOBILE6.2 due to the model's technical limitations at the project-level (71 FR 12498–12502).

However, the court remanded to EPA for further explanation of the Agency's interpretation of Clean Air Act section 176(c)(1)(B)(iii). The court instructed EPA on remand to interpret how this provision of the Act is met within the local area affected by an individual project, or explain why this statutory provision does not apply within such an area. *Environmental Defense v. EPA,* 509 F.3d. 553 (DC Cir. 2007). Today's proposal is intended to respond to this part of the court's decision.

B. Proposal

EPA is proposing to make two minor changes to section 93.116(a) of the conformity rule to address the court's remand. First, EPA is explicitly stating in this provision that federally funded or approved highway and transit projects in $PM_{2.5}$ and PM_{10}

[16] The March 10, 2006 rule constituted final action on EPA's original proposal from November 5, 2003 (68 FR 62690, 62712) and a supplemental proposal from December 13, 2004 (69 FR 72140, 72144–45, and 72149–50).

[17] Section 93.123(b) contains the types of projects for which a hot-spot analysis applies in $PM_{2.5}$ and PM_{10} areas. For additional discussion, please refer to ''V. Projects of Air Quality Concern and General Requirements for $PM_{2.5}$ and PM_{10} Hot-spot Analyses'' in the preamble of the March 10, 2006 final rule at 71 FR 12490–12498.

[18] EPA and petitioners settled a third issue that was not raised to the court. The settlement was finalized on June 22, 2007 (72 FR 34460), and described a stakeholder process that EPA will use to develop its future $PM_{2.5}$ and PM_{10} quantitative hot-spot modeling guidance.

nonattainment and maintenance areas must meet the requirements of Clean Air Act section 176(c)(1)(B)(iii) within the local area affected by the project. EPA is also proposing to make explicit in § 93.116 the existing requirement that projects must be included in a regional emissions analysis under 40 CFR 93.118 or 93.119. Consistent with the Court's decision, EPA is not proposing additional requirements, such as requiring that an individual project reduce emissions in the local project area.

EPA is not proposing any substantive changes to existing requirements for project-level conformity determinations. Under today's proposal, project-level conformity determinations, including any hot-spot analyses, would continue to be performed in the same manner as current practice. Projects would continue to be required to be a part of a regional emissions analysis that supports a conforming transportation plan and TIP. Hot-spot analyses would need to demonstrate that during the time frame of the transportation plan no new local violations would be created and the severity or number of existing violations would not be increased as a result of a new project. By making these demonstrations, it can be assured that the project would not delay timely attainment or any required interim reductions or milestones, as described further below. In addition, project sponsors would continue to document the hot-spot analysis as part of the project-level conformity determination, and the public would continue to be able to comment on any aspects of the conformity determination through existing public involvement requirements.

EPA notes that today's proposal would also address new projects in CO nonattainment and maintenance areas, since the hot-spot analysis requirements in section 93.116(a) also apply to such areas. Although the March 2006 final rule and the December 2007 court case did not involve CO hot-spot requirements, EPA believes it is appropriate to clarify that Clean Air Act section 176(c)(1)(B)(iii) must also be met for projects in CO nonattainment and maintenance areas.

Solely for purposes of ensuring that state and local implementers and the public understand today's proposed change within the context of existing conformity requirements, EPA is also including section 93.116(a) regulatory text in its entirety in today's proposal. However, EPA is not proposing to amend the existing regulatory text in 40 CFR 93.116(a) that is not addressed by the issues discussed in today's proposal. As described above, EPA is proposing only to add regulatory text to section 93.116(a) to clarify that federally funded or approved highway and transit projects in $PM_{2.5}$, PM_{10}, and CO nonattainment and maintenance areas must meet the requirements of Clean Air Act section 176(c)(1)(B)(iii) within the local area affected by the project. EPA is not reopening for public comment any other aspects of the current section 93.116(a), or any other provisions in the conformity rule regarding project-level conformity determinations (*e.g.*, what projects require hot-spot analyses or methodology requirements, as described in 40 CFR 93.123).

C. Rationale

1. General

Project-level conformity determinations must demonstrate that all of the requirements in Clean Air Act section 176(c)(1)(B) are met. Section 176(c)(1)(B) defines conformity to a SIP to mean ''that such activities will not (i) cause or contribute to any new violation of any NAAQS in any area; (ii) increase the frequency or severity of any existing violation of any NAAQS in any area; or (iii) delay timely attainment of any NAAQS or any required interim emission reductions or other milestones in any area.''

In *Environmental Defense,* the court held that EPA did not explain how it interpreted the language of Clean Air Act section 176(c)(1)(B)(iii) in conjunction with related language in sections 176(c)(1)(B)(i) and (ii). Although section 93.116(a) of the existing conformity rule includes the statutory text for section 176(c)(1)(B)(i) and (ii), it does not explicitly include the statutory language in section 176(c)(1)(B)(iii). The court stated that, if ''any area'' in the first two provisions refers to a ''local area,'' then EPA must either interpret the term ''any area'' in section 176(c)(1)(B)(iii) to also mean ''local area,'' or explain why a different interpretation is reasonable. 509 F.3d at 560–61. EPA agrees with the court that it is reasonable to conclude that all of section 176(c)(1)(B) requirements must be met in the local project area.

EPA believes that its existing conformity hot-spot regulations, as well as other conformity requirements, already require that individual projects comply with section 176(c)(1)(B)(iii) in the local project area. EPA has always intended the term ''any area'' in all three statutory provisions of section 176(c)(1)(B) to include the local area affected by the emissions produced by a new project. For example, as EPA stated in the March 2006 final hot-spot rule (71 FR 12483), ''a regional emissions analysis for an area's entire planned transportation system is not sufficient to ensure that individual projects meet the requirements of section 176(c)(1)(B) where projects could have a localized air quality impact.''

To implement section 176(c)(1)(B) requirements in $PM_{2.5}$, PM_{10}, and CO nonattainment and maintenance areas (40 CFR 93.109(b)), EPA's current conformity rule requires project-level conformity determinations to address the regional and local emissions impacts from new projects. Section 93.115(a) requires that an individual project must be consistent with the emissions projections and control measures in the SIP, either by inclusion in a conforming transportation plan and TIP or through a separate demonstration (and regional emissions analysis developed under 40 CFR 93.118 or 93.119). In addition, section 93.116(a) requires that some project-level conformity determinations include a hot-spot analysis that demonstrates emissions from a single project do not negatively impact air quality within the area substantially affected by the project.[19] Through meeting all of these requirements, it can be assured that a project does not cause or contribute to a new or worsened air quality violation, delay timely attainment, or delay required interim emission reductions or other milestones.

However, in light of the court's request for further explanation, EPA is clarifying in this proposal that it interprets the term ''any area'' in Clean Air Act section 176(c)(1)(B) to mean any portion of a nonattainment or maintenance area, including the local area affected by a transportation project. The proposed clarifications and the existing conformity requirements ensure that transportation planners address the requirement that there be no delay in timely attainment or required interim reductions or other milestones in the local project area.

EPA notes that Clean Air Act section 176(c)(1)(B)(iii) does not require an individual project to reduce emissions in the local project area for it to be consistent with the requirement not to delay timely attainment or required interim reductions or milestones, as EPA explained in the preamble to its March 2006 hot-spot regulations (71 FR 12482), with which the Court agreed.

[19] Hot-spot analyses must be based on the latest data and models under 40 CFR 93.109(b), 93.111, and 93.123, and therefore any growth in other emissions sources or the impact of new or existing emissions controls (including those in any required SIP) would always be considered in a hot-spot analysis prior to approving a project.

See also Environmental Defense v. EPA, 467 F.3d 1329, 1337 (DC Cir. 2006) (''EPA argues, and we agree, that conformity to a SIP can be demonstrated by using the build/no-build test, even if individual transportation plans do not actively reduce emissions''). Clean Air Act section 176(c)(1)(B)(iii) does not require a new project to mitigate new or worsened air quality violations that it does not cause. This statutory provision also does not require a new project to contribute new interim reductions beyond those that are already required in the SIP.

The only case where Congress specifically required individual projects to provide emission reductions in hot-spot analyses is for projects in certain CO nonattainment areas. Clean Air Act section 176(c)(3)(B)(ii) requires individual projects in CO nonattainment areas to ''eliminate or reduce the severity and number of violations of the carbon monoxide NAAQS in areas substantially affected by the project.'' [20] Since Congress did not establish such a requirement for any project in $PM_{2.5}$ and PM_{10} areas under section 176(c)(3)(B)(ii), and for the reasons described in today's proposal, EPA does not interpret such a requirement to apply to projects in $PM_{2.5}$ or PM_{10} areas under section 176(c)(1)(B)(iii).

2. Requirement for No Delay in Timely Attainment of the NAAQS

Today's proposal would clarify that a project would meet Clean Air Act section 176(c)(1)(B)(iii) requirements not to delay timely attainment as long as no new or worsened violations are predicted to occur, which is already required under the existing hot-spot requirements. While overall emissions can increase in a local area above those expected without a new project's implementation, a project will not delay timely attainment if air quality concentrations meet federal air quality NAAQS or air quality is improved from what would have occurred without the new project's implementation.

For example, suppose a hot-spot analysis is performed for a new highway project that is predicted to significantly increase the number of diesel trucks from what is expected in the local area without the project. A year is chosen in this example to analyze when peak emissions from the project are expected and future air quality is most likely to be impacted due to the cumulative impacts of the project and background emissions in the project area. Under both the current conformity rule and the proposed clarification, the project would meet section 176(c)(1)(B)(iii) requirements not to delay timely attainment in the local project area as long as the project's new emissions do not create new violations or worsen existing violations in the local project area. Such a demonstration would examine the total impact of the project's new emissions in the context of the future transportation system, any expected growth in other emissions sources, and any existing or new control measures that are expected to impact the local project area. If the hot-spot analysis demonstrated that the proposed project would improve or not impact air quality, then timely attainment would also not be delayed from what would have occurred without the project. In contrast, if such a project increased emissions enough to cause a new violation or worsen an existing violation in the local project area, then the project would delay timely attainment, since worsening air quality above the NAAQS would impede the ability to attain in the local project area. In such a case, the project could not be found to conform until the new or worsened future violation was mitigated.

3. Requirement for No Delay in Timely Attainment of Any Required Interim Reductions or Milestones

Today's proposal also ensures that a project would meet Clean Air Act section 176(c)(1)(B)(iii) requirements for no delay in the timely attainment of any *required* interim reductions or other milestones. EPA interprets ''any required interim emission reductions or other milestones'' to refer to Clean Air Act requirements associated with reductions and milestones addressed by reasonable further progress SIPs, rather than other reductions required for other purposes. However, EPA believes there is added value in referencing in section 93.116(a) the existing conformity requirement that a project be consistent with the budgets and control measures in any applicable SIP. Therefore, EPA is proposing to clarify that this requirement is satisfied in the local project area if a project is consistent with the motor vehicle emissions budget(s) and control measures in the applicable SIP or interim emission test(s) (in the absence of a SIP budget). Although such a demonstration is already required under the current rule, EPA's proposed reference to the requirements in 40 CFR 93.118 and 93.119 would clarify that a project's emissions—when combined with all other emissions from all other existing and other proposed transportation projects—are consistent with any applicable required interim reductions and milestones.

Today's proposal also supports the implementation of control measures that are relied upon in reasonable further progress demonstrations and could impact air quality in the local project area. Under the existing conformity rule, control measures that are relied upon for reasonable further progress SIPs must have sufficient state and local commitments to be included in a regional emissions analysis or a hot-spot analysis. If the implementation of a control measure is not assured, then such reductions cannot be included in the regional emissions analysis for the entire nonattainment or maintenance area (40 CFR 93.122(a)) or within the local project area considered in a hot-spot analysis (40 CFR 93.123(c)(3) and (4)). EPA believes that these existing requirements also ensure that ''any required interim emissions reductions or other milestones'' are not delayed within a local project area as a result of a single project's emissions.

For example, a project may not meet Clean Air Act section 176(c)(1)(B)(iii) requirements if SIP control measures were not being implemented as expected and as a result, a project's emissions (when combined with expected future emissions without the SIP control measures) caused a new violation or worsened an existing violation in the local project area. In such a case, additional control measures as part of the conformity determination may be required in order to offset any emissions increases from a project.

Today's proposal would also result in all Clean Air Act section 176(c)(1)(B)(iii) requirements being met when air quality improves as a result of the project, *e.g.*, an existing air quality violation that would have occurred without the project is estimated to be reduced or eliminated if the new project were implemented. EPA believes that all of section 176(c)(1)(B) requirements would be met in the local project area in such a case since the Act requires that individual projects do not worsen air quality or affect an area's ability to attain or achieve interim requirements. Certainly, if air quality improves in the local project area with the implementation of a new project, EPA believes that timely attainment and required reasonable further progress interim requirements are not delayed. In fact, the opposite would be true in such a case, since future air quality would be improved and attainment possibly expedited from what would have occurred without the project's implementation.

[20] This requirement is included in section 93.116(b) of the existing conformity rule.

4. Summary

In summary, today's proposed clarifications and the existing conformity rule would ensure that transportation projects meet Clean Air Act section 176(c)(1)(B)(iii) requirements. As long as a transportation project does not worsen air quality concentrations within the local project area, and is consistent with the motor vehicle emissions budget(s) and control measures in the applicable SIP or interim emissions test(s) (in the absence of budgets), it would not delay timely attainment, or interfere with required interim reductions and other milestones, even if it does not reduce emissions levels within a project's location. For these reasons, EPA is not proposing to add any new requirements to the existing conformity rule. Instead, EPA is proposing simply to clarify the rule in § 93.116(a) to address the *Environmental Defense* court's remand of the March 2006 hot-spot regulation for further explanation of the applicability of Clean Air Act section 176(c)(1)(B)(iii).

X. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993), this action is a ''significant regulatory action'' because it raises novel legal and policy issues. Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under EO 12866 and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The information collection requirements of EPA's existing transportation conformity regulations and the proposed revisions in today's action are already covered by EPA information collection request (ICR) entitled, ''Transportation Conformity Determinations for Federally Funded and Approved Transportation Plans, Programs and Projects.'' The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 93 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0561. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an Agency to prepare a regulatory flexibility analysis of rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit organizations and small government jurisdictions.

For purposes of assessing the impacts of this proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This regulation directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000. These organizations do not constitute small entities within the meaning of the Regulatory Flexibility Act. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The purpose of this proposal is to amend the conformity rule to clarify how certain highway and transit projects meet statutory conformity requirements for particulate matter (PM) in response to a December 2007 court ruling, and to update the regulation to accommodate revisions to the PM_{10} and $PM_{2.5}$ NAAQS. This proposal merely implements already established law that imposes conformity requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. Thus, today's proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule will not significantly or uniquely impact small governments because it directly affects federal agencies and metropolitan planning organizations that, by definition, are designated under federal transportation laws only for metropolitan areas with a population of at least 50,000.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This proposed rule does not have federalism implications. It will not have substantial direct effects on states, on the relationship between the national government and states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The Clean Air Act requires conformity to apply in certain nonattainment and maintenance areas as a matter of law, and this proposed action merely proposes to establish and revise procedures for transportation planning entities in subject areas to follow in meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communication between EPA and state and local governments, EPA specifically solicits comment on this proposed rule from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The Clean Air Act requires transportation conformity to apply in

any area that is designated nonattainment or maintenance by EPA. This proposal would amend the conformity rule to clarify how certain highway and transit projects meet statutory conformity requirements for particulate matter in response to a December 2007 court ruling, and to update the conformity rule to accommodate revisions to the PM_{10} and $PM_{2.5}$ NAAQS. Because today's proposed amendments to the conformity rule do not significantly or uniquely affect the communities of Indian tribal governments, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997,) applies to any rule that: (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 18355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency regarding energy. Further, this rule is not likely to have any adverse energy effects because it does not raise novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities, or the principles set forth in Executive Orders 12866 and 13211.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 *note*) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposal does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This proposal would simply amend the conformity rule to clarify how certain highway and transit projects meet statutory requirements for particulate matter in response to a December 2007 court ruling, and updates the conformity rule to accommodate revisions to the PM_{10} and $PM_{2.5}$ NAAQS.

K. Determination Under Section 307(d)

Pursuant to Clean Air Act Section 307(d)(1)(U), the Administrator determines that this section is subject to the provisions of section 307(d). Section 307(d)(1)(U) provides that the provisions of section 307(d) apply to ''such other actions as the Administrator may determine.''

List of Subjects in 40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Clean Air Act, Environmental protection, Highways and roads, Intergovernmental relations, Mass transportation, Nitrogen dioxide, Ozone, Particulate matter, Transportation, Volatile organic compounds.

Dated: May 6, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set out in the preamble, 40 CFR part 93 is proposed to be amended as follows:

PART 93—[AMENDED]

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 93.101 is amended by adding new definitions for ''24-hour PM_{10} NAAQS'', ''1997 $PM_{2.5}$ NAAQS'', ''2006 $PM_{2.5}$ NAAQS'', and ''Annual PM_{10} NAAQS'' to read as follows:

§ 93.101 Definitions.

* * * * *

24-hour PM_{10} NAAQS means the 24-hour PM_{10} national ambient air quality standard codified at 40 CFR 50.6.

* * * * *

1997 $PM_{2.5}$ NAAQS means the $PM_{2.5}$ national ambient air quality standards codified at 40 CFR 50.7.

* * * * *

2006 $PM_{2.5}$ NAAQS means the 24-hour $PM_{2.5}$ national ambient air quality standard codified at 40 CFR 50.13.

* * * * *

Annual PM_{10} NAAQS means the annual PM_{10} national ambient air quality standard that EPA revoked on December 18, 2006.

* * * * *

§ 93.105 [Amended]

3. Section 93.105 is amended in paragraph (c)(1)(vi) by removing the citation ''§ 93.109(l)(2)(iii)'' and adding in its place ''§ 93.109(n)(2)(iii)''.

4. Section 93.109 is amended as follows:

a. In paragraph (b):

i. By removing the citation ''(c) through (i)'' and adding in its place the citation ''(c) through (k)'';

ii. By removing the reference ''(j)'' and adding in its place ''(l)'';

iii. By removing the reference ''(k)'' and adding in its place ''(m)'';

iv. By removing the reference ''(l)'' and adding in its place ''(n)'';

b. By revising paragraph (g)(2) introductory text;

c. By redesignating paragraph (g)(3) as (g)(4);

d. By adding new paragraph (g)(3);

e. By revising the heading of paragraph (i);

f. By adding the words ''such 1997'' before the words ''$PM_{2.5}$ nonattainment and maintenance areas'' in paragraphs (i)(1), (i)(2) introductory text, and (i)(3);

g. By redesignating paragraphs (j), (k), and (l) as (l), (m), and (n), respectively;

h. In newly designated paragraph (n)(2) introductory text by removing the citation ''(c) through (k)'' and adding in its place the citation ''(c) through (m)'';

i. In newly designated paragraph (n)(2)(iii):

i. By removing the citation ''(l)(2)(ii)'' and adding in its place the citation ''(n)(2)(ii)'';

ii. By removing the citation ''(l)(2)(ii)(C)'' and adding in its place the citation ''(n)(2)(ii)(C)'';

j. By adding new paragraphs (j) and (k).

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

* * * * *

(g) * * *

(2) In PM_{10} nonattainment and maintenance areas where a budget is submitted for the 24-hour PM_{10} NAAQS, the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

* * * * *

(3) Prior to paragraph (g)(2) of this section applying, the budget test must be satisfied as required by § 93.118 using the approved or adequate motor vehicle emissions budget established for the revoked annual PM_{10} NAAQS, if such a budget exists.

* * * * *

(i) *1997 $PM_{2.5}$ nonattainment and maintenance areas.* * * *

(j) *2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas without 1997 $PM_{2.5}$ NAAQS motor vehicle emissions budgets for any portion of the 2006 $PM_{2.5}$ NAAQS area.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register;** or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register,** if such approval is completed through direct final rulemaking.

(3) In such $PM_{2.5}$ nonattainment areas the interim emissions tests must be satisfied as required by § 93.119 for conformity determinations made if there is no approved motor vehicle emissions budget from an applicable implementation plan for the 2006 $PM_{2.5}$ NAAQS and no adequate motor vehicle emissions budget from a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS.

(k) *2006 $PM_{2.5}$ NAAQS nonattainment and maintenance areas with motor vehicle emissions budgets for the 1997 $PM_{2.5}$ NAAQS that cover all or a portion of the 2006 $PM_{2.5}$ nonattainment area.* In addition to the criteria listed in Table 1 in paragraph (b) of this section that are required to be satisfied at all times, in such 2006 $PM_{2.5}$ nonattainment and maintenance areas conformity determinations must include a demonstration that the budget and/or interim emissions tests are satisfied as described in the following:

(1) FHWA/FTA projects in such $PM_{2.5}$ nonattainment and maintenance areas must satisfy the appropriate hot-spot test required by § 93.116(a).

(2) In such $PM_{2.5}$ nonattainment and maintenance areas the budget test must be satisfied as required by § 93.118 for conformity determinations made on or after:

(i) The effective date of EPA's finding that a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan for the 2006 $PM_{2.5}$ NAAQS is adequate for transportation conformity purposes;

(ii) The publication date of EPA's approval of such a budget in the **Federal Register**; or

(iii) The effective date of EPA's approval of such a budget in the **Federal Register**, if such approval is completed through direct final rulemaking.

(3) Prior to paragraph (k)(2) of this section applying, the following test(s) must be satisfied:

(i) If the 2006 $PM_{2.5}$ nonattainment area covers the same geographic area as the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by § 93.118 using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission;

(ii) If the 2006 $PM_{2.5}$ nonattainment area covers a smaller geographic area within the 1997 $PM_{2.5}$ nonattainment or maintenance area(s), the budget test as required by § 93.118 for either:

(A) The 2006 $PM_{2.5}$ nonattainment area using corresponding portion(s) of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where such portion(s) can reasonably be identified through the interagency consultation process required by § 93.105; or

(B) The 1997 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission. If additional emissions reductions are necessary to meet the budget test for the 2006 $PM_{2.5}$ NAAQS in such cases, these emissions reductions must come from within the 2006 $PM_{2.5}$ nonattainment area;

(iii) If the 2006 $PM_{2.5}$ nonattainment area covers a larger geographic area and encompasses the entire 1997 $PM_{2.5}$ nonattainment or maintenance area(s):

(A) The budget test as required by § 93.118 for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission; and the interim emissions tests as required by § 93.119 for either: The portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state of a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area; or

(B) The budget test as required by § 93.118 for the entire 2006 $PM_{2.5}$ nonattainment area using the approved or adequate motor vehicle emissions budgets in the applicable 1997 $PM_{2.5}$

implementation plan or implementation plan submission.

(iv) If the 2006 $PM_{2.5}$ nonattainment area partially covers a 1997 $PM_{2.5}$ nonattainment or maintenance area(s):

(A) The budget test as required by § 93.118 for the portion of the 2006 $PM_{2.5}$ nonattainment area covered by the corresponding portion of the approved or adequate motor vehicle emissions budgets in the 1997 $PM_{2.5}$ applicable implementation plan or implementation plan submission where they can be reasonably identified through the interagency consultation process required by § 93.105; and

(B) The interim emissions tests as required by § 93.119, when applicable, for either: The portion of the 2006 $PM_{2.5}$ nonattainment area not covered by the approved or adequate budgets in the 1997 $PM_{2.5}$ implementation plan, the entire 2006 $PM_{2.5}$ nonattainment area, or the entire portion of the 2006 $PM_{2.5}$ nonattainment area within an individual state, in the case where separate 1997 $PM_{2.5}$ SIP budgets are established for each state in a multi-state 1997 $PM_{2.5}$ nonattainment or maintenance area.

* * * * *

5. Section 93.116 is amended by revising paragraph (a) to read as follows:

§ 93.116 Criteria and procedures: Localized CO, PM_{10}, and $PM_{2.5}$ violations (hot-spots).

(a) This paragraph applies at all times. The FHWA/FTA project must not cause or contribute to any new localized CO, PM_{10}, and/or $PM_{2.5}$ violations, increase the frequency or severity of any existing CO, PM_{10}, and/or $PM_{2.5}$ violations, or delay timely attainment of any standard or any required interim emission reductions or other milestones in CO, PM_{10}, and $PM_{2.5}$ nonattainment and maintenance areas. This criterion is satisfied without a hot-spot analysis in PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas for FHWA/FTA projects that are not identified in § 93.123(b)(1). This criterion is satisfied for all other FHWA/FTA projects in CO, PM_{10} and $PM_{2.5}$ nonattainment and maintenance areas if it is demonstrated that during the time frame of the transportation plan no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project, and the project has been included in a regional emissions analysis that meets applicable §§ 93.118 and/or 93.119 requirements. The demonstration must be performed according to the consultation requirements of § 93.105(c)(1)(i) and the methodology requirements of § 93.123.

§ 93.118 [Amended]

6. Section 93.118 is amended in paragraph (a) by removing the citation ''§ 93.109(c) through (l)'' and adding in its place ''§ 93.109(c) through (n)''.

7. Section 93.119 is amended as follows:

a. In paragraph (a), by removing the citation ''§ 93.109(c) through (l)'' and adding in its place ''§ 93.109(c) through (n)''; and

b. By revising paragraph (e)(2).

§ 93.119 Criteria and procedures: Interim emissions in areas without motor vehicle emissions budgets.

* * * * *

(e) * * *

Option 1 for paragraph (e)(2):

(2) The emissions predicted in the ''Action'' scenario are not greater than:

(A) 2002 emissions, in areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS as described in § 93.109(i); or

(B) 2008 emissions, in areas designated nonattainment for the 2006 $PM_{2.5}$ NAAQS as described in § 93.109(j) and (k).

Option 2 for paragraph (e)(2):

(2) The emissions predicted in the ''Action'' scenario are not greater than:

(A) 2002 emissions, in areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS; or

(B) Emissions in the most recent year for which EPA's Air Emissions Reporting Requirements (40 CFR Part 51, Subpart A) requires submission of on-road mobile source emissions inventories, as of the effective date of nonattainment designations for any $PM_{2.5}$ NAAQS other than the 1997 $PM_{2.5}$ NAAQS.

* * * * *

§ 93.121 [Amended]

8. Section 93.121 is amended:

a. In paragraph (b) introductory text by removing the citation ''§ 93.109(l)'' and adding in its place ''§ 93.109(n)'';

b. In paragraph (c) introductory text by removing the citation ''§ 93.109(j) and (k)'' and adding in its place ''§ 93.109(l) and (m)''.

[FR Doc. E9–11184 Filed 5–14–09; 8:45 am]

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Federal Register

Friday,
May 15, 2009

Part III

Environmental Protection Agency

40 CFR Part 180

Carbofuran; Final Tolerance Revocations; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0162; FRL–8413–3]

Carbofuran; Final Tolerance Revocations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is revoking all tolerances for carbofuran. The Agency has determined that the risk from aggregate exposure from the use of carbofuran does not meet the safety standard of section 408(b)(2) of the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This final rule is effective August 13, 2009. Written objections, requests for a hearing, or requests for a stay identified by the docket identification (ID) number EPA–HQ–OPP–2005–0162 must be received on or before July 14, 2009, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: Written objections and hearing requests, identified by the docket ID number EPA–HQ–OPP–2005–0162, may be submitted to the Hearing Clerk by one of the following methods:

- *Mail*: U.S. EPA Office of the Hearing Clerk, Mailcode 1900 L, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: U.S. EPA Office of the Hearing Clerk, 1099 14th St., NW., Suite 350, Franklin Court, Washington, DC 20005. Deliveries are only accepted during the Office's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Office's telephone number is (202) 564–6262.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit this copy, identified by docket ID number EPA–HQ–OPP–2005–0162, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket Facility telephone number is (703) 305–5805.

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

Submitting CBI. Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM as CBI and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the objection that includes information claimed as CBI, a copy of the objection that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Jude Andreasen, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–9342; e-mail address: *andreasen.jude@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

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

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

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

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

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

C. What Can I Do if I Wish the Agency To Maintain a Tolerance That the Agency Has Revoked?

Any affected party has 60 days from the date of publication of this order to file objections to any aspect of this order with EPA and to request an evidentiary hearing on those objections (21 U.S.C. 346a(g)(2)). A person may raise objections without requesting a hearing.

The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objection (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a

hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27).

Although any person may file an objection, the substance of the objection must have been initially raised as an issue in comments on the proposed rule. As explained in the July 31, 2008 proposed rule (73 FR 44864) (FRL–8378–8), EPA will treat as waived any issue not originally raised in timely submitted comments. Accordingly, EPA will not consider any legal or factual issue presented in objections that was not presented by a commenter in response to the proposed rule, if that issue could reasonably have been raised at the time of the proposal.

Similarly, if you fail to file an objection to an issue resolved in the final rule within the time period specified, you will have waived the right to challenge the final rule's resolution of that issue (40 CFR 178.30(a)). After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings on this rule. *See Nader v EPA*, 859 F.2d 747 (9th Cir. 1988), *cert denied* 490 US 1931 (1989).

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0162 in the subject line on the first page of your submission. All requests must be in writing, and must be received by the Hearing Clerk as required by 40 CFR part 178 on or before July 14, 2009.

EPA will review any objections and hearing requests in accordance with 40 CFR 178.30, and will publish its determination with respect to each in the **Federal Register**. A request for a hearing will be granted only to resolve factual disputes; objections of a purely policy or legal nature will be resolved in the Agency's final order, and will only be subject to judicial review pursuant to 21 U.S.C. 346a(h)(1), (40 CFR 178.20(c) and 178.32(b)(1)). A hearing will only be held if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable probability that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims to the contrary; and resolution of the issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.30).

II. Introduction

A. What Action Is the Agency Taking?

EPA is revoking all of the existing tolerances for residues of carbofuran. Currently, tolerances have been established on the following crops: Alfalfa, forage; alfalfa, hay; artichoke, globe; banana; barley, grain; barley, straw; beet, sugar roots; beet, sugar tops; coffee bean, green; corn, forage; corn, grain (including popcorn); corn, stover; corn, sweet, kernel plus cob; cotton, undelinted seed; cranberry; cucumber; grape; grape raisin; grape, raisin, waste; melon; milk; oat, grain; oat, straw; pepper; potato; pumpkin; rice, grain; rice, straw; sorghum, forage; sorghum, grain grain; sorghum, grain, stover; strawberry; soybean, forage; soybean, hay; squash; sugarcane, cane; sunflower, seed; wheat, grain; wheat, straw.

As discussed at greater length in Unit VII., on September 29, 2008, the sole registrant of carbofuran pesticide products, FMC Corporation requested that EPA cancel certain registrations. Consistent with the request, the registrant indicated that it no longer seeks to maintain the tolerances associated with the domestic use of carbofuran on the eliminated crops, and therefore no longer opposes the revocation of those tolerances. No other commenter indicated any interest in maintaining these tolerances. EPA is therefore revoking the tolerances associated with those domestic uses on two separate grounds. The first is that the tolerances will no longer be necessary because the registrations for these uses have been canceled (74 FR 11551, March 18, 2009) (FRL–8403–6). The tolerances that EPA is revoking on this basis are: Alfalfa, forage; alfalfa, hay; artichoke, globe; barley, grain; barley, straw; beet, sugar roots; beet, sugar tops; corn, fresh (including sweet); cotton, undelinted seed; cranberry; cucumber; grape; grape raisin; grape, raisin, waste; melon; oat, grain; oat, straw; pepper; rice, straw; sorghum, forage; sorghum, grain grain; sorghum, grain, stover; strawberry; soybean, forage; soybean, hay; squash; wheat, grain; and wheat, straw. The second basis is that EPA also finds, that as outlined in its July 31, 2008 proposed rule, revocation of these tolerances is warranted on the grounds that aggregate exposure to residues from these tolerances do not meet the safety standard of section 408(b)(2) of the FFDCA. The Agency is therefore revoking tolerances for these crops because aggregate dietary exposure to these residues of carbofuran, including all anticipated dietary exposures and all other exposures for which there is reliable information, is not safe.

The remaining tolerances the commenters seek to retain are: Banana; coffee bean; corn, forage; corn, grain; corn, stover; milk; potato; pumpkin; rice, grain; sugarcane, cane; and sunflower, seed. EPA has determined that aggregate exposure to carbofuran greater than 0.000075 milligrams/kilogram/day (mg/kg/day) (*i.e.*, greater than the acute Population Adjusted Dose (aPAD)) does not meet the safety standard of section 408(b)(2) of the FFDCA. For the 11 remaining tolerances, based on the contribution from food alone, exposure levels are below EPA's level of concern. At the 99.9th percentile of exposure, aggregate carbofuran dietary exposure from food alone was estimated to range between 0.000020 mg/kg/day for children 6 to 12 years old (29% of the aPAD) and 0.000058 mg/kg/day (78% of the aPAD) for children 1 to 2 years old, the population subgroup with the highest estimated dietary exposure. However, EPA's analyses show that those individuals—both adults and children—who receive their drinking water from sources vulnerable to carbofuran contamination are exposed to carbofuran levels that exceed EPA's level of concern—in some cases by orders of magnitude. This primarily includes those populations consuming drinking water from ground water from shallow wells in acidic aquifers overlaid with sandy soils that have had crops treated with carbofuran. Aggregate exposures from food and from drinking water derived from ground water in vulnerable areas (*e.g.*, from shallow wells associated with sandy soils and acidic aquifers) result in significant estimated exceedances. The estimates for aggregate food and ground water exposure from such sources range between 780% of the aPAD for adults over 50 years, to 9,400% of the aPAD for infants. Similarly, EPA analyses show substantial exceedances for those populations that obtain their drinking water from reservoirs (*i.e.*, surface water) located in small agricultural watersheds, prone to runoff, and predominated by crops that are treated with carbofuran, even though there is more uncertainty associated with these exposure estimates. For example, estimated aggregate exposures from food and drinking water derived from surface water, based on corn use in Nebraska, range between 330% of the aPAD for

youths 13 to 19 years old and 3,900% of the aPAD for infants.

Every analysis EPA has performed has shown that estimated exposures from drinking water from each remaining domestic use significantly exceed EPA's level of concern for children. Accordingly, aggregate exposures from food and water significantly exceed safe levels. Although the magnitude of the exceedance varies depending on the level of conservatism in the assessment, the fact that in each case aggregate exposures to residues of carbofuran fail to meet the FFDCA section 408(b)(2) safety standard, including where EPA relied on highly refined estimates of risk, using all relevant data and methods, strongly corroborates EPA's conclusion that aggregate exposures to residues of carbofuran are not safe.

B. Overview of Final Rule

EPA's final rule preamble is organized primarily into two sections. Following a brief summary of the July 31, 2008 proposed rule, EPA summarizes the major comments received on the proposed rule, along with the Agency's responses in Unit VII. Because EPA only presents a summary of all of the comments received, readers are encouraged to also consult EPA's Response to Comments Documents, found in the docket for today's action (Refs. 111, 112, 113). These documents contain EPA's complete responses to all of the significant comments received on this rulemaking, and therefore will contain a more detailed explanation on many of the issues presented in Unit VII.

Unit VIII. presents the results of EPA's analyses of carbofuran's dietary risks. This Unit generally describes the bases for the Agency's conclusions that carbofuran presents unacceptable dietary risks to children. Readers are also encouraged to consult EPA's underlying risk assessment support documents, identified in the References section, and contained in the docket for today's action, for a more detailed presentation of EPA's scientific analyses.

Each of these units is generally organized consistent with the structure of a risk assessment. Each unit begins with a discussion of carbofuran's toxicity, and EPA's hazard identification, including a discussion of the issues surrounding the selection of the children's safety factor EPA has applied to this chemical. EPA then discusses issues relating to carbofuran's exposures from food and drinking water. The final section of each unit relates to EPA's conclusions regarding the risks from carbofuran's aggregate (*i.e.*, food + water) exposures.

C. What Is the Agency's Authority for Taking This Action?

EPA is taking this action, pursuant to the authority in FFDCA sections 408(b)(1)(b), 408(b)(2)(A), and 408(e)(1)(A). 21 U.S.C. 346a(b)(1)(b), (b)(2)(A), (e)(1)(A).

III. Statutory and Regulatory Background

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities (including animal feed) and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications to tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

Section 408(e) of the FFDCA, 21 U.S.C. 346a(e), authorizes EPA to modify or revoke tolerances on its own initiative. EPA is revoking these tolerances to implement the Agency's findings made during the reregistration and tolerance reassessment processes. As part of these processes, EPA is required to determine whether each of the existing tolerances meets the safety standard of section 408(b)(2) (21 U.S.C. 346a(b)(2)). Section 408(b)(2)(A)(i) of the FFDCA requires EPA to modify or revoke a tolerance if EPA determines that the tolerance is not ''safe'' (21 U.S.C. 346a(b)(2)(A)(i)). Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information'' (21 U.S.C. 346a(b)(2)(A)(ii). This includes exposure through drinking water and in residential settings, but does not include occupational exposure.

Risks to infants and children are given special consideration. Specifically, section 408(b)(2)(C) states that EPA:

> shall assess the risk of the pesticide chemical based on— . . .
>
> (II) available information concerning the special susceptibility of infants and children to the pesticide chemical residues, including neurological differences between infants and children and adults, and effects of *in utero* exposure to pesticide chemicals; and
>
> (III) available information concerning the cumulative effects on infants and children of such residues and other substances that have a common mechanism of toxicity. . . .

(21 U.S.C. 346a(b)(2)(C)(i)(II) and (III)).

This provision further directs that ''[i]n the case of threshold effects, . . .an additional tenfold margin of safety for the pesticide chemical residue and other sources of exposure shall be applied for infants and children to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children'' (21 U.S.C. 346a(b)(2)(C)). EPA is permitted to ''use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children'' (Id.). The additional safety margin for infants and children is referred to throughout this final rule as the ''children's safety factor.''

IV. Carbofuran Background and Regulatory History

In July 2006, EPA completed a refined acute probabilistic dietary risk assessment for carbofuran as part of the reassessment program under section 408(q) of the FFDCA. The assessment was conducted using Dietary Exposure Evaluation Model-Food Commodity Intake Database (DEEM-FCID™, Version 2.03), which incorporates consumption data from the United States Department of Agriculture's (USDA's) Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), 1994–1996 and 1998, as well as carbofuran monitoring data from USDA's Pesticide Data Program[1] (PDP), estimated percent crop treated information, and processing/cooking factors, where applicable. The assessment was conducted applying a

[1] USDA's Pesticide Data Program monitors for pesticides in certain foods at the distribution points just before release to supermarkets and grocery stores.

500–fold safety factor that included a 5X children's safety factor, pursuant to section 408(b)(2)(C). That refined assessment showed acute dietary risks from carbofuran residues in food above EPA's level of concern (Ref. 19). Since 2006, EPA has evaluated additional data submitted by the registrant, FMC Corporation, and has further refined its original assessment by incorporating more recent 2005/2006 PDP data, and by conducting additional analyses. In January 2008, EPA published a draft Notice of Intent to Cancel (NOIC) all carbofuran registrations, based in part on carbofuran's dietary risks. As mandated by FIFRA, EPA solicited comments from the FIFRA Scientific Advisory Panel (SAP) on its draft NOIC. Having considered the comments from the SAP, EPA initiated the process to revoke all carbofuran tolerances, publishing its proposed revocation on July 31, 2008 (73 FR 44864). The comment period for the proposed rule closed on September 29, 2008. Having considered all comments received by this date, EPA is now finalizing the revocation of all existing carbofuran tolerances. As noted above, aggregate exposures from food and water to the U.S. population at the upper percentiles of exposure substantially exceed the safe daily levels and thus are ''unsafe'' within the meaning of FFDCA section 408(b)(2) (Ref. 71). It is particularly significant that under every analysis EPA has conducted, the levels of carbofuran exceed the safe daily dose for children, even when EPA used the most refined data and models available. Based on these findings, EPA has decided to move expeditiously to address the unacceptable dietary risks to children. EPA anticipates issuing the NOIC subsequent to undertaking the activities required to revoke the carbofuran tolerances.

V. EPA's Approach to Dietary Risk Assessment

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. A short summary is provided below to aid the reader. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1999/January/Day-04/p34736.htm*

To assess the risk of a pesticide tolerance, EPA combines information on pesticide toxicity with information regarding the route, magnitude, and duration of exposure to the pesticide. The risk assessment process involves four distinct steps: (1) Identification of the toxicological hazards posed by a pesticide; (2) determination of the exposure ''level of concern'' for humans; (3) estimation of human exposure; and (4) characterization of human risk based on comparison of human exposure to the level of concern.

A. Hazard Identification and Selection of Toxicological Endpoint

Any risk assessment begins with an evaluation of a chemical's inherent properties, and whether those properties have the potential to cause adverse effects (*i.e.*, a hazard identification). EPA then evaluates the hazards to determine the most sensitive and appropriate adverse effect of concern, based on factors such as the effect's relevance to humans and the likely routes of exposure.

Once a pesticide's potential hazards are identified, EPA determines a toxicological level of concern for evaluating the risk posed by human exposure to the pesticide. In this step of the risk assessment process, EPA essentially evaluates the levels of exposure to the pesticide at which effects might occur. An important aspect of this determination is assessing the relationship between exposure (dose) and response (often referred to as the dose-response analysis). In evaluating a chemical's dietary risks EPA uses a reference dose (RfD) approach, which involves a number of considerations including:

- A ''point of departure'' (PoD)—the value from a dose-response curve that is at the low end of the observable data and that is the toxic dose that serves as the 'starting point' in extrapolating a risk to the human population.
- An uncertainty factor to address the potential for a difference in toxic response between humans and animals used in toxicity tests (*i.e.*, interspecies extrapolation).
- An uncertainty factor to address the potential for differences in sensitivity in the toxic response across the human population (for intraspecies extrapolation).
- The need for an additional safety factor to protect infants and children, as specified in FFDCA section 408(b)(2)(C).

EPA uses the chosen PoD to calculate a safe dose or RfD. The RfD is calculated by dividing the chosen PoD by all applicable safety or uncertainty factors. Typically in EPA risk assessments, a combination of safety or uncertainty factors providing at least a hundredfold (100X) margin of safety is used: 10X to account for interspecies extrapolation and 10X to account for intraspecies extrapolation. Further, in evaluating the dietary risks for pesticide chemicals, an additional safety factor of 10X is presumptively applied to protect infants and children, unless reliable data support selection of a different factor. In implementing FFDCA section 408, EPA also calculates a variant of the RfD referred to as a Population Adjusted Dose (PAD). A PAD is the RfD divided by any portion of the children's safety factor that does not correspond to one of the traditional additional uncertainty/safety factors used in general Agency risk assessment. The reason for calculating PADs is so that other parts of the Agency, which are not governed by FFDCA section 408, can, when evaluating the same or similar substances, easily identify which aspects of a pesticide risk assessment are a function of the particular statutory commands in FFDCA section 408. For acute assessments, the risk is expressed as a percentage of a maximum acceptable dose or the acute PAD (*i.e.*, the acute dose which EPA has concluded will be ''safe''). As discussed below in Unit V.C., dietary exposures greater than 100% of the acute PAD are generally cause for concern and would be considered ''unsafe'' within the meaning of FFDCA section 408(b)(2)(B). Throughout this document general references to EPA's calculated safe dose are denoted as an acute PAD, or aPAD, because the relevant point of departure for carbofuran is based on an acute risk endpoint.

Carbofuran is a member of the class of pesticides called *n*-methyl carbamates (NMCs). The primary toxic effect caused by NMCs, including carbofuran, is neurotoxicity resulting from inhibition of the enzyme acetylcholinesterase (AChE, See Unit VIII.A.). The toxicity profile of these pesticides is characterized by rapid time to onset of effects followed by rapid recovery (minutes to hours). Consistent with its mechanism of action, toxicity data on AChE inhibition from laboratory rats provide the basis for deriving the PoD for carbofuran.

B. Estimating Human Dietary Exposure Levels

Pursuant to section 408(b) of the FFDCA, EPA has evaluated carbofuran's dietary risks based on ''aggregate exposure'' to carbofuran. By ''aggregate exposure,'' EPA is referring to exposure to carbofuran by multiple pathways of exposure. EPA uses available data and standard analytical methods, together with assumptions designed to be protective of public health, to produce separate estimates of exposure for a highly exposed subgroup of the general population, for each potential pathway and route of exposure. For acute risks,

EPA then calculates potential aggregate exposure and risk by using probabilistic[2] techniques to combine distributions of potential exposures in the population for each route or pathway. For dietary analyses, the relevant sources of potential exposure to carbofuran are from the ingestion of residues in food and drinking water. The Agency uses a combination of monitoring data and predictive models to evaluate environmental exposure of humans to carbofuran.

1. *Exposure from Food*. Data on the residues of carbofuran in foods are available from a variety of sources. One of the primary sources of data comes from federally conducted surveys, including the PDP conducted by the USDA. Further, market basket surveys, which are typically performed by registrants, can provide additional residue data. These data generally provide a characterization of pesticide residues in or on foods consumed by the U.S. population that closely approximates real world exposures because they are sampled closer to the point of consumption in the chain of commerce than field trial data, which are generated to establish the maximum level of legal residues that could result from maximum permissible use of the pesticide. In certain circumstances, when EPA believes the information will provide more accurate exposure estimates, EPA will rely on field trial data (see below in Unit VIII.E.1.).

EPA uses a computer program known as the DEEM-FCID™ to estimate exposure by combining data on human consumption amounts with residue values in food commodities. DEEM-FCID™ also compares exposure estimates to appropriate RfD or PAD values to estimate risk. EPA uses DEEM-FCID™ to estimate exposure for the general U.S. population as well as for 32 subgroups based on age, sex, ethnicity, and region. DEEM-FCID™ allows EPA to process extensive volumes of data on human consumption amounts and residue levels in making risk estimates. Matching consumption and residue data, as well as managing the thousands of repeated analyses of the consumption database conducted under probabilistic risk assessment techniques, requires the use of a computer.

DEEM-FCID™ contains consumption and demographic information on the individuals who participated in the USDA's CSFII in 1994–1996 and 1998. The 1998 survey was a special survey required by the FQPA to supplement the number of children survey participants. DEEM-FCID™ also contains ''recipes'' that convert foods as consumed (*e.g.*, pizza) back into their component raw agricultural commodities (*e.g.*, wheat from flour, or tomatoes from sauce). This is necessary because residue data are generally gathered on raw agricultural commodities rather than on finished ready-to-eat food. Data on residue values for a particular pesticide and the RfD or PADs for that pesticide are inputs to the DEEM-FCID™ program to estimate exposure and risk.

For carbofuran's assessment, EPA used DEEM-FCID™ to calculate risk estimates based on a probabilistic distribution. DEEM-FCID™ combines the full range of residue values for each food with the full range of data on individual consumption amounts to create a distribution of exposure and risk levels. More specifically, DEEM-FCID™ creates this distribution by calculating an exposure value for each reported day of consumption per person (''person-day'') in CSFII, assuming that all foods potentially bearing the pesticide residue contain such residue at a value selected randomly from the concentration data sets. The exposure amounts for the thousands of person-days in the CSFII are then collected in a frequency distribution. EPA also uses DEEM-FCID™ to compute a distribution taking into account both the full range of data on consumption levels and the full range of data on potential residue levels in food. Combining consumption and residue levels into a distribution of potential exposures and risk requires use of probabilistic techniques.

The probabilistic technique that DEEM-FCID™ uses to combine differing levels of consumption and residues involves the following steps:

(1) Identification of any food(s) that could bear the residue in question for each person-day in the CSFII.

(2) Calculation of an exposure level for each of the thousands of person-days in the CSFII database, based on the foods identified in Step #1 by randomly selecting residue values for the foods from the residue database.

(3) Repetition of Step #2 one thousand times for each person-day.

(4) Collection of all of the hundreds of thousands of potential exposures estimated in Steps ## 2 and 3 in a frequency distribution.

The resulting probabilistic assessment presents a range of exposure/risk estimates.

2. *Exposure from water*. EPA may use field monitoring data and/or simulation water exposure models to generate pesticide concentration estimates in drinking water. Monitoring and modeling are both important tools for estimating pesticide concentrations in water and can provide different types of information. Monitoring data can provide estimates of pesticide concentrations in water that are representative of the specific agricultural or residential pesticide practices in specific locations, under the environmental conditions associated with a sampling design (*i.e.*, the locations of sampling, the times of the year samples were taken, and the frequency by which samples were collected). Although monitoring data can provide a direct measure of the concentration of a pesticide in water, it does not always provide a reliable basis for estimating spatial and temporal variability in exposures because sampling may not occur in areas with the highest pesticide use, and/or when the pesticides are being used and/or at an appropriate sampling frequency to detect high concentrations of a pesticide that occur over the period of a day to several days.

Because of the limitations in most monitoring studies, EPA's standard approach is to use simulation water exposure models as the primary means to estimate pesticide exposure levels in drinking water. Modeling is a useful tool for characterizing vulnerable sites, and can be used to estimate peak pesticide water concentrations from infrequent, large rain events. EPA's computer models use detailed information on soil properties, crop characteristics, and weather patterns to estimate water concentrations in vulnerable locations where the pesticide could be used according to its label (69 FR 30042, 30058–30065, May 26, 2004) (FRL–7355–7). These models calculate estimated water concentrations of pesticides using laboratory data that describe how fast the pesticide breaks down to other chemicals and how it moves in the environment at these vulnerable locations. The modeling provides an estimate of pesticide concentrations in ground water and surface water. Depending on the modeling algorithm (*e.g.*, surface water modeling scenarios), daily concentrations can be estimated

[2] Probabilistic analysis is used to predict the frequency with which variations of a given event will occur. By taking into account the actual distribution of possible consumption and pesticide residue values, probabilistic analysis for pesticide exposure assessments ''provides more accurate information on the range and probability of possible exposure and their associated risk values'' (Ref. 101). In capsule, a probabilistic pesticide exposure analysis constructs a distribution of potential exposures based on data on consumption patterns and residue levels and provides a ranking of the probability that each potential exposure will occur. People consume differing amounts of the same foods, including none at all, and a food will contain differing amounts of a pesticide residue, including none at all.

continuously over long periods of time, and for places that are of most interest for any particular pesticide.

EPA relies on models it has developed for estimating pesticide concentrations in both surface water and ground water. Typically EPA uses a two-tiered approach to modeling pesticide concentrations in surface and ground water. If the first tier model suggests that pesticide levels in water may be unacceptably high, a more refined model is used as a second tier assessment. The second tier model for surface water is actually a combination of two models: The Pesticide Root Zone Model (PRZM) and the Exposure Analysis Model System (EXAMS). The second tier model for ground water uses PRZM alone.

A detailed description of the models routinely used for exposure assessment is available from the EPA OPP Water Models web site: *http://www.epa.gov/oppefed1/models/water/index.htm*. These models provide a means for EPA to estimate daily pesticide concentrations in surface water sources of drinking water (a reservoir) using local soil, site, hydrology, and weather characteristics along with pesticide application and agricultural management practices, and pesticide environmental fate and transport properties. Consistent with the recommendations of the FIFRA SAP, EPA also considers regional percent cropped area factors (PCA) which take into account the potential extent of cropped areas that could be treated with pesticides in a particular area. The PRZM and EXAMS models used by EPA were developed by EPA's Office of Research and Development (ORD), and are used by many international pesticide regulatory agencies to estimate pesticide exposure in surface water. EPA's use of the PCA area factors and the Index Reservoir scenario was reviewed by the FIFRA SAP in 1999 and 1998, respectively (Refs. 37 and 38).

In modeling potential surface water concentrations, EPA attempts to model areas of the country that are vulnerable to surface water contamination rather than simply model ''typical'' concentrations occurring across the nation. Consequently, EPA models exposures occurring in small highly agricultural watersheds in different growing areas throughout the country, over a 30–year period. The scenarios are designed to capture residue levels in drinking water from reservoirs with small watersheds with a large percentage of land use in agricultural production. EPA believes these assessments are likely reflective of a small subset of the watersheds across the country that maintain drinking water reservoirs, representing a drinking water source generally considered to be more vulnerable to frequent high concentrations of pesticides than most locations that could be used for crop production.

EPA uses the output of daily concentration values from tier two modeling as an input to DEEM-FCID™, which combines water concentrations with drinking water consumption information in the daily diet to generate a distribution of exposures from consumption of drinking water contaminated with pesticides. These results are then used to calculate a probabilistic assessment of the aggregate human exposure and risk from residues in food and drinking water.

3. *Aggregate exposure analyses*. Using probabilistic analyses, EPA combines the national food exposures with the exposures derived for individual region and crop-specific drinking water scenarios to derive estimates of aggregate exposure. Although food is distributed nationally, and residue values are therefore not expected to vary substantially throughout the country, drinking water is locally derived and concentrations of pesticides in source water fluctuate over time and location for a variety of reasons. Pesticide residues in water fluctuate daily, seasonally, and yearly as a result of the timing of the pesticide application, the vulnerability of the water supply to pesticide loading through runoff, spray drift and/or leaching, and changes in the weather. Concentrations are also affected by the method of application, the location and characteristics of the sites where a pesticide is used, the climate, and the type and degree of pest pressure.

EPA's standard acute dietary exposure assessment calculates total dietary exposure over a 24–hour period; that is consumption over 24 hours is summed and no account is taken of the fact that eating and drinking occasions may spread out exposures over a day. This total daily exposure generally provides reasonable estimates of the risks from acute dietary exposures, given the nature of most chemical endpoints. Due to the rapid recovery associated with carbofuran toxicity (AChE inhibition), 24–hour exposure periods may or may not, *a priori*, be appropriate. To the extent that a day's eating or drinking occasions leading to high total daily exposure might be found close together in time, or to occur from a single eating event, minimal AChE recovery would occur between eating occasions (*i.e.*, exposure events). In that case, the ''24-hour sum'' approach, which sums eating events over a 24-hour period, would provide reasonable estimates of risk from food and drinking water. Conversely, to the extent that eating occasions leading to high total daily exposures are widely separated in time (within 1 day) such that substantial AChE recovery occurs between eating occasions, then the estimated risks under any 24–hour sum approach may be overstated. In that case, a more sophisticated approach – one that accounts for intra-day eating and drinking patterns and the recovery of AChE between exposure events — may be more appropriate. This approach is referred to as the ''Eating Occasions Analysis'' and it takes into account the fact that the toxicological effect of a first dose may be reduced or tempered prior to a second (or subsequent) dose.

Thus, rather than treating a full day's exposure as a one-time ''bolus'' dose, as is typically done in the Agency's assessments, the Eating Occasion Analysis uses the actual time of eating or drinking occasion, and amounts consumed as reported by individuals to the USDA CSFII. The actual CSFII-recorded time of each eating event is used to ''separate out'' the exposures due to each eating occasion; in doing so, this ''separation'' allows the Agency to distinguish between each intake event and account for the fact that at least some partial recovery of AChE inhibition attributable to the first (earlier) exposure occurs before the second exposure event. For chemicals for which the toxic effect is rapidly reversible, the time between two (or more) exposure events permits partial to full recovery from the toxic effect from the first exposure and it is this ''partial recovery'' that is specifically accounted for by the Eating Occasion Analysis. More specifically, an estimated ''persisting dose'' from the first exposure event is added to the second exposure event to account for the partial recovery of AChE inhibition that occurs over the time between the first and second exposures. The ''persisting dose'' terminology, and this general approach were originally offered by the FIFRA SAP in the context of assessing AChE inhibition from cumulative exposures to organophosphorous pesticides (OPs) (Ref. 40).

C. Selection of Acute Dietary Exposure Level of Concern

Because probabilistic assessments generally present a realistic range of residue values to which the population may be exposed, EPA's starting point for estimating exposure and risk for such aggregate assessments is the 99.9th percentile of the population under

evaluation, which represents one person out of every 1,000 persons. When using a probabilistic method of estimating acute dietary exposure, EPA typically assumes that, when the 99.9th percentile of acute exposure is equal to or less than the aPAD, the level of concern for acute risk has not been exceeded. By contrast, where the analysis indicates that estimated exposure at the 99.9th percentile exceeds the aPAD, EPA would generally conduct one or more sensitivity analyses to determine the extent to which the estimated exposures at the high-end percentiles may be affected by unusually high food consumption or residue values. To the extent that one or a few values seem to ''drive'' the exposure estimates at the high end of exposure, EPA would consider whether these values are reasonable and should be used as the primary basis for regulatory decision making (Ref. 101).

VI. Summary of the Proposed Rule

EPA proposed to revoke all of the existing tolerances for residues of carbofuran on the grounds that aggregate exposure from all uses of carbofuran fail to meet the FFDCA section 408 safety standard (73 FR 44864). Based on the contribution from food alone, EPA calculated that dietary exposures to carbofuran exceeded EPA's level of concern for all of the more sensitive subpopulations of infants and children. At the 99.9th percentile, carbofuran dietary exposure from food alone was estimated at 0.000082 mg/kg/day (110% of the aPAD) for children 3–5 years old, the population subgroup with the highest estimated dietary exposure (Ref. 16). In addition, EPA's analyses showed that those individuals—both adults as well as children—who receive their drinking water from vulnerable sources are also exposed to levels that exceed EPA's level of concern—in some cases by orders of magnitude. This primarily included those populations consuming drinking water from ground water from shallow wells in acidic aquifers overlaid with sandy soils that have had crops treated with carbofuran. It also included those populations that obtain their drinking water from reservoirs located in small agricultural watersheds, prone to runoff, and predominated by crops that are treated with carbofuran, although there was more uncertainty associated with these exposure estimates. The proposal discussed a number of sensitivity analyses the Agency had conducted in order to further characterize the potential risks to children. Every one of these sensitivity analyses determined that estimated exposures significantly exceeded EPA's level of concern for children.

VII. Summary of Public Comments and EPA Responses

This section presents a summary of some of the significant comments received on the proposed rule, as well as the Agency's responses. More detailed responses to these comments, along with the Agency's responses to other comments received can be found in the Response to Comments Documents, located in the docket for this rulemaking (Refs. 111, 112, and 113).

A. Tolerances Associated With Voluntarily Canceled Uses

On September 29, 2008, the registrant, FMC Corporation requested EPA to eliminate several uses from their end-use products. Consistent with this request, the registrant has indicated that it no longer seeks to maintain the tolerances associated with the domestic use of these products, and therefore no longer opposes the revocation of those tolerances. No other commenter indicated any interest in maintaining these tolerances. EPA is therefore revoking the tolerances associated with those domestic uses, on two separate grounds. The first ground is that the tolerances will no longer be necessary because the registrations for these uses have been canceled. The tolerances that EPA is revoking on this basis are: Alfalfa, forage; alfalfa, hay; artichoke, globe; barley, grain; barley, straw; beet, sugar roots; beet, sugar tops; corn, fresh (including sweet); corn, popcorn; cotton, undelinted seed; cranberry; cucumber; grape; grape raisin; grape, raisin, waste; melon; oat, grain; oat, straw; pepper; rice, straw; sorghum, forage; sorghum, grain grain; sorghum, grain, stover; strawberry; soybean, forage; soybean, hay; squash; wheat, grain; and wheat, straw.

EPA also finds, however, that revocation of these tolerances is warranted on the grounds that aggregate exposures to these residues of carbofuran do not meet the safety standard of section 408(b)(2) of the FFDCA. The Agency is therefore revoking tolerances for these crops because aggregate dietary exposures to residues of carbofuran, including all anticipated dietary exposures and all other exposures for which there is reliable information, are not safe.

As noted in the proposed rule, based on the contribution from only the foods bearing residues resulting from all of these tolerances, dietary exposures to carbofuran would be unsafe for the more sensitive children's subpopulations. At the 99.9th percentile, carbofuran dietary exposure from food alone was estimated at 0.000082 mg/kg/day (110% of the aPAD) for children 3–5 years old, the population subgroup with the highest estimated dietary exposure (Ref. 70). In addition, as discussed in more detail, both in the proposed rule, and in Unit VIII.E.2. below, drinking water residues of carbofuran contribute significantly to unsafe aggregate exposures. Accordingly, it has not been shown that exposures from these uses would meet the FFDCA safety standard.

B. Comments Relating to EPA's Toxicology Assessment

1. *Comments relating to EPA's PoD.* One group of commenters stated that the studies clearly support EPA's conclusion that the post-natal day (PND)11 brain data on the inhibition of AChE in juvenile rats provide the most appropriate PoD for risk assessment. The commenters also claimed, however, that ''the specific PoD proposed by EPA is 0.03 mg/kg/day, but our analysis of the best data for the risk assessment are found in the good laboratory practices (GLP) compliant studies and those studies support 0.033 as a better value for the PND11 rat.'' This group of commenters also described an analysis their consultant had conducted. According to the commenters, their consultant calculated the value of 0.033 mg/kg/day/day from the BMD_{10}s and $BMDL_{10}$s [3] in the four FMC studies with first observation time equal to 0.25 hours. The BMDs and BMDLs were calculated separately for each of these datasets. The results for the four datasets were combined, but, unlike EPA's analyses, the datasets themselves were not combined.

With respect to using the PND11 rat pup data as the PoD, the Agency acknowledges this area of agreement with the commenters. Ultimately, the $BMDL_{10}$ recommended by the commenters differs from the EPA's $BMDL_{10}$ by only 6% (0.031 mg/kg/day vs. 0.033 mg/kg/day), a difference that is not biologically significant. Moreover, when rounded to one significant digit, as is done by typical convention and consistent with the dose information provided in the comparative cholinesterase (ChE) studies (also called CCA studies), both values yield the identical PoD of 0.03 mg/kg/day.

Moreover, the Agency notes that the value of 0.033 mg/kg/day recommended

[3] BMD is an abbreviation for benchmark dose. The $BMDL_{10}$ is the lower 95% confidence limit on the BMD_{10}. The BMD_{10} is the estimated dose (*i.e.*, benchmark dose) to result in 10% AChE inhibition. EPA uses the BMDL, not the BMD, as the point of departure.

by the commenter does not include the 0.5–hr time-point from MRID no. 47143705 although this dataset yielded the lowest BMDL for individual datasets reported by the commenters. As such, the commenter's recommended value does not include all of the relevant data collected at the time of peak effect. The commenters have provided no rationale for why it would be appropriate to selectively exclude data from the time frame in this study most relevant to the risk assessment. Accordingly, as noted in footnote 115 of the comment, when the commenters included the data at 0.5–hr timepoint from MRID no. 47143705, the $BMDL_{10}$ was lowered from 0.033 to 0.030 mg/kg/day—a value almost identical to the Agency's $BMDL_{10}$ of 0.031 mg/kg/day.

Thus, although the commenters are critical of the Agency's approach, there is basic consensus between EPA and the commenters that the PoD is 0.03 mg/kg/day given the precision of available data in deriving the $BMDL_{10}$.

The Agency also notes that specific details about the commenter's BMD modeling were not provided to the Agency. The Agency is therefore unable to fully evaluate the scientific validity of the modeling procedure used by the commenter.

Some commenters claimed that ''EPA's derivation of its PoD, however, is not transparent and is not scientifically supported. Equally important, based on a recent review of the raw data from the Moser study (obtained via a FOIA request originally filed in April 2008), we believe that the Moser study may not meet minimum criteria for scientific acceptability. Critical data are simply unavailable for this study, including: a complete protocol, analysis of dosing solutions, clinical observations, standardization of brain and red blood cell (RBC) AChE results in terms of amount per unit of protein, and quality assurance records of inspections for the carbofuran portion of the study.'' As a result, the commenters assert that the better approach is to use the brain AChE inhibition values calculated from the GLP-compliant registrant studies, because the commenters claim that EPA has acknowledged them to be valid, and which the commenters claim are fully documented. Using EPA's BMD dose-time response model, the commenters claim that the correct PoD is 0.033 mg/kg/day.

The Agency disagrees with the commenters' assertions that the derivation of the PoD was not transparent. The Agency's analysis, computer code, and data have been placed in the docket for public scrutiny. EPA's models have been repeatedly reviewed and approved by the FIFRA SAP (Refs. 42, 43, and 44), and, as part of that process, been made available to the public. The most recent occasion was as part of the February 2008 FIFRA SAP meeting on the draft carbofuran NOIC. As EPA has explained numerous times, the Agency has not deviated from its standard practice. Most recently, EPA laid out its approach at length in the proposed rule. While it is true that EPA may not have repeated in this most recent analysis all of the specifics that it has previously provided, it is inaccurate for the commenter to claim that the information is not available, or that its review has in any way been hampered by this so-called lack of transparency. Indeed, given that the commenters appear to have been able to duplicate EPA's analyses, it seems reasonable to assume that the information was available. It is further worth noting that the commenters had sufficient access to the Moser data to allow a complete re-analysis before the 2008 SAP on the draft carbofuran NOIC, which was months before the FOIA request was filed with the Agency. In addition, a complete study protocol as well as a report of the quality assurance (QA) technical and data reviews of the study were included in the documents provided in response to the FOIA request. The Agency further notes that although the commenters complain about their perceived lack of transparency in EPA's BMD calculations, they did not provide any detailed information about the derivation of their proposed value.

EPA also disagrees with the claim that EPA's PoD is not scientifically supported. As an initial matter, EPA notes that the commenters' suggested PoD of 0.033 mg/kg/day is not significantly different than EPA's PoD of 0.03 mg/kg/day (see Unit VIII.B.). The criticisms of the Moser study are also incorrect. The procedures and documentation are in accordance with the ORD Quality Assurance Management Plan. Concerning standardization of brain and RBC AChE in terms of protein, it is interesting to note that, despite their complaints that EPA had failed to do this, the registrant also failed to do this in their own studies. However, in the Moser study, the AChE activity was standardized in terms of tissue weight per ml, so the amount of protein was consistent across samples. This is an acceptable and widely used practice. Further, abnormal (or ''clinical'') observations were recorded when they occurred; however, it is not technically possible to observe the animals while they are being tested for motor activity. Finally, the registrant is correct that the dosing solutions for the CCA study were not analyzed, but this was done for the adult studies in McDaniel *et al.,* (2007), and the preparation and stability of the carbofuran samples were confirmed therein.

If, however, the Agency elected to follow the commenters' recommendation to not use the ORD data in the risk assessment, there would be no high quality RBC AChE inhibition data available in juvenile rats. As such, there would be no surrogate data evaluating AChE inhibition in the peripheral nervous system (PNS), much less any data from the PNS itself. As discussed in Unit VIII.C., with the availability of some RBC data from ORD evaluating the effects in the PNS, the Agency is able to reduce the children's safety factor from 10X to 4X. Without the ORD data, the Agency would be required to retain the statutory 10X.

Some commenters raised concern that EPA's PoD was not sufficiently protective. The commenters point to comments from the February SAP review of EPA's draft carbofuran NOIC, quoting the following language from the report, which indicated concern that the starting point used in the risk assessment was not sufficiently protective:

> Some Panel members questioned the assumption that a 10% level of brain AChE inhibition (*i.e.*, BMD_{10}) is sufficiently harmless to be used as a point of departure in risk assessment. It was noted that as more refined brain data become available, we are beginning to understand that not all regions of this organ show the same level of AChE inhibition. Thus a 10% inhibition for the whole brain may imply significantly greater inhibition in a more sensitive region.

The FIFRA SAP report provides conflicting information on the issue of the benchmark dose response used by EPA in its BMD calculations. On page 53 of the FIFRA SAP report, the text suggests that the available data do not support the 10% response level used in BMD modeling and that a 20% response level is more appropriate. The text quoted by the commenters from the report argues that a 10% response level may not be sufficiently health protective, but that a 5% response level may be more appropriate. Given the lack of unanimous advice by the Panel in this case, and that past SAPs have previously supported the use of a 10% level in comparable cases, the Agency has concluded that the overall weight of the available evidence supports a decision that use of a 10% response level will be protective of human health.

A more detailed response to this issue can be found in the Agency's response to the SAP (Ref. 109).

2. *Comments relating to the children's safety factor*—a. *Reliance on RBC to predict effects on the PNS*. Some commenters argued that brain is a better surrogate for the PNS than RBC, and that therefore reliance on the brain data is sufficiently protective that no additional children's safety factor is necessary. The commenters claim that the carbofuran data on brain AChE inhibition and on clinical signs of toxicity indicate that PNS AChE inhibiton is sufficiently modeled by brain AChE inhibtion. They note that the available data show that brain AChE responds rapidly to carbofuran; it readily passes the blood-brain barrier and the data show maximal AChE inhibition within minutes. The commenters also alleged that brain and tissue AChE are more similar to each other than to RBC AChE. The commenters also point to the fact that oral time-course studies by EPA and the registrant show that brain cholinesterase responds quickly and recovers promptly. Carbofuran clearly reaches the brain quickly. They also cite to the fact that EPA has acknowledged that in adults, no difference in sensitivity is seen between brain and RBC AChE inhibition.

The commenters repeatedly mention the rapid speed by which carbofuran reaches the brain and the rapid onset and recovery of AChE inhibition as support for the notion that reliance on the brain data will be adequately protective of PNS toxicity. The Agency agrees with the commenters on the rapid nature of carbofuran toxicity. However, this rapid toxicity occurs in multiple tissues, not just the brain. Moreover, the time course of such toxicity is not relevant to determining which tissue is more sensitive. Therefore, these comments are not relevant to a discussion of the use of brain versus RBC AChE as a surrogate for PNS toxicity.

The commenters' allegation that brain and tissue AChE are more similar to each other than to RBC AChE is not scientifically supportable. Radic and Taylor (2006), for example, state, ''In humans and most other vertebrate species, only one gene encodes AChE'' (Ref. 81). Accordingly, if only one gene encodes the enzyme, then the structure of the active site is the same throughout the body.

Responses in adult animals are not necessarily predictive or relevant to responses in juveniles since the metabolic capacity of juveniles is less than that of adults. As such, juveniles can be more sensitive to some toxic agents. Specific to carbofuran, multiple studies have shown juvenile rats to be more sensitive than adult rats. Thus, comments about responses in adults are less relevant compared to data in pups from the carbofuran risk assessment, particularly in the evaluation of the children's safety factor.

One group of commenters argue that there is evidence that RBC AChE activity can be inhibited to a greater degree than AChE in peripheral organs. For example, Marable *et al.*, (2007), showed that chlorpyrifos caused much greater inhibition of AChE in RBC than in diaphragm, left atrium, and quadriceps, as well as in brain. Similarly, Padilla *et al.*, (2005), reported a greater inhibition of AChE in RBC than in diaphragm or brain. Bretaud *et al.*, (2000), showed that carbofuran caused significant inhibition of AChE in brain tissues but not in muscle in goldfish. The commenters claim that these results demonstrate that RBC AChE activity does not reflect AChE activity in peripheral organs.

The commenters mention three references: Padilla *et al.*, 2005; Marable *et al.*, 2007; Bretaud *et al.*, 2000. Two of these studies involve testing with chlorpyrifos in rats (Refs. 65 and 77) and the third involves testing fish with carbofuran (Ref. 14). Quantitative extrapolation of RBC and peripheral AChE inhibition differences from fish to mammals is highly uncertain because distribution of carbofuran across fish and mammalian tissues may be quite different. The Padilla *et al.*, (2005) and Marable *et al.*, (2007) references include testing with chlorpyrifos, an OP whose primary mode of action is also AChE inhibition (Refs. 65 and 77). Exposure to OP and NMC insecticides results in inhibition of AChE. The Agency assumes it is this similarity in mechanism of toxicity, which provides the basis for inclusion of these chlorpyrifos references by the commenters.

The Agency believes that direct comparison between the results of studies with chlorpyrifos and carbofuran should be done with great caution. OP and NMC insecticides have different time courses of effects, which lead to toxicity profiles that are somewhat different. The studies cited by the commenters (Padilla *et al.*, 2005, Marable *et al.*, 2007) involve long-term treatment (chronic exposure) in adult animals where blood, brain and peripheral tissue AChE inhibition were at steady-state. The time course and AChE inhibition in various tissues at steady state is distinctly different from acute AChE inhibition at the time of peak effect, like that in the carbofuran studies. In the case of acute toxicity with NMCs, the time course of inhibition and reactivation of the AChE is rapid (minutes to hours). In the case of OPs, when steady state inhibition is achieved in adults, recovery is slow (days to weeks) and is influenced by synthesis of new AChE protein. In addition, as stated above, responses in adults are not adequate for drawing conclusions in the young. As such, the Agency views the Padilla *et al.*, (2005) and Marable, *et al.*, (2007) references as providing limited useful information for the carbofuran risk assessment.

Although the Agency is cautious about direct comparisons between OPs and NMCs, it must be noted in this case that: (1) The commenters have provided an incomplete review of the literature and ignored more relevant studies; and (2) the chlorpyrifos literature does, in fact, generally support the Agency's conclusions with respect to carbofuran.

The commenters state specifically that ''[t]here is also evidence that RBC AChE activity can be inhibited to a greater degree than AChE in peripheral organs.'' The assertion that RBC AChE activity can be more inhibited than peripheral tissues ignores relevant chlorpyrifos data. For example, Richardson and Chambers (2003) showed that lung AChE can be more sensitive than serum and brain AChE in rat fetuses (Ref. 82).

EPA's response to comments document provides a more extensive review of chlorpyrifos studies (those that include data in peripheral tissue) than that discussed by the commenters (Ref. 112). While there are many studies that have measured AChE inhibition with chlorpyrifos, the Agency has limited its discussion here only to those in pregnant rats and fetuses which provide peripheral AChE data (*e.g.*, heart, lung, and liver) as they are the most relevant to the present issues raised by the commenters. Several chlorpyrifos studies in pregnant dams and/or their fetuses show that peripheral AChE is more sensitive than brain AChE. For example, a study conducted by Dow AgroSciences showed that a dose of 1 mg/kg results in 4–6 fold more inhibition in heart AChE than in brain tissues (Refs. 66 and 67). Similarly, Hunter *et al.*, (1999) showed that in pregnant dams at doses of 3 mg/kg liver AChE was inhibited 84% when brain tissues were inhibited by only 41% (Ref. 51). Fetuses evaluated at or near the peak time of effect in the Hunter *et al.*, (1999) study showed 2–8 fold more AChE inhibition in liver than in brain. (Id.). Although there is some variation among studies, the preponderance of data supports the

conclusion that peripheral tissues are more sensitive to chlorpyrifos exposure than brain tissues. Thus, the chlorpyrifos data in fetuses and pregnant rats supports the Agency's concern that sole reliance on brain data may not be protective of the PNS following carbofuran exposure. Chlorpyrifos data in post-natal pups are described in the Agency's Response to Comments on the proposed tolerance revocation (Ref. 112).

Although OPs and NMCs both inhibit AChE, the chemical reaction at the active site differs. This difference leads to different time courses of toxicity and recovery. As such, comparisons, particularly quantitative ones, between chlorpyrifos and carbofuran should be done with care. However, in general, review of these data supports the Agency's conclusion for carbofuran that in the absence of high quality data that is relevant for risk assessment in either peripheral tissue or a surrogate (*i.e.*, RBCs), the Agency cannot be certain that brain AChE inhibition is protective of potential peripheral toxicity following carbofuran exposure. Therefore, the chlorpyrifos data support the Agency's conclusion that at least a portion of the children's safety factor must be retained for carbofuran given the lack of peripheral AChE data and lack of RBC AChE (as a surrogate for peripheral AChE) at the low end of the dose-response curve.

b. *Comments relating to EPA's approach to deriving the 4X factor*. One group of commenters argued that EPA's approach to calculating its 4X Children's Safety Factor was flawed. According to the commenters, it would be more plausible and straightforward to compare the RBC and brain AChE levels at the same time in the same rat when these rats are exposed to carbofuran. Based on an analysis of the RBC and brain AChE inhibition data, the commenters' claim that the percentage reduction in RBC AChE in a rat is almost the same as the percentage reduction in brain AChE in that same rat. The commenters summarize a statistical evaluation of the experimental data on AChE inhibitions in RBC and brain in rats due to carbofuran exposure conducted by their contractor, and claim that this evaluation shows that the percentage inhibition of RBC AChE in a rat compared to the percentage inhibition of brain AChE in the rat is no more than 1.5X—a difference that they claim is not meaningful from a physiological perspective and does not warrant imposition of a 4X FQPA safety factor.

EPA notes that the commenters recommended this approach of comparing the degree of inhibition for each animal as part of their presentation to the Carbofuran SAP. EPA also addressed this approach, comparing RBC to brain in the same animals, at the SAP and in the responses to the SAP report (Ref. 109). It is notable that the SAP did not endorse this approach.

EPA's analyses of the commenters' approach identified several significant deficiencies. First, the comparison suggested by the commenter means that EPA would need to ignore existing data. This is because only EPA's study of PND11 animals contains both brain and RBC data, so the comparisons suggested by the commenter can only be made using that dataset. However, the dose levels in that study were so high that the lower portion of the dose-response curve was missed. At these higher doses, there is little difference between the levels of brain and RBC inhibition. This phenomenon, namely the relative sensitivity of RBC compared to brain appears smaller at higher doses. This phenomenom is also shown in multiple chlorpyrifos studies, where blood or peripheral measures of AChE inhibition are more sensitive than brain at low to mid doses but the tissues appear to be similar at higher doses.

Second, the commenters' approach is fundamentally flawed. The commenters' suggested alternative relies exclusively on comparisons between the degree of inhibition in the treated animals without any regard to the doses at which the effects occurred. For example, one animal may have shown, on average, 10% inhibition in the brain, when it demonstrated 20% RBC inhibition. Under this approach, what would be relevant would simply be the ratio of 1:2. But the Agency believes it is critical to focus on the ratios of *potency*, which is the ratio of the doses in the data that cause the same level of AChE inhibition. The Agency's approach of comparing potencies is more directly relevant for regulatory purposes than comparisons of average inhibition. This is because dose corresponds more directly to potential exposures, which is what EPA regulates (*i.e.*, how much pesticide residue does a child ingest). By comparison, the commenters' suggested reliance purely on the average degree of inhibition provides no information that corresponds to a practical basis for regulation.

Finally, the range of ratios of effects that the commenters propose as an alternative is consistent with range of potencies that EPA has calculated at the higher doses in the available data, so the commenters' results do not ultimately contradict EPA's assessment, which tries to account for what occurs at lower doses. Briefly, if the dose-responses for RBC and brain inhibition were linear, ratios of inhibition would equal ratios of BMDs. However, these dose-responses are not at all linear, and the available data demonstrate that brain and blood dose-responses have somewhat different shapes. Thus, estimates of relative effects at particular, relatively high, doses are not relevant to the problem of estimating potency ratios at lower doses. The dose-response curves level off at about the same level of inhibition, so, at high doses, there is no difference between the ratio of inhibitions. Except at the lowest dose, where the ratio is slightly greater than 2, the remaining ratios are only slightly greater than 1. Given the inevitable statistical noise in these measures, it is clear that the ratios expected from EPA's modeling are substantially similar to what the commenter finds in its comparison between individuals. Accordingly, the commenter's suggested comparisons at higher doses provide no evidence of what occurs at lower doses; and thus provides no evidence that demonstrates that EPA's modeling results at lower doses is inaccurate.

One group of commenters claimed that the statistical comparisons that support EPA's selection of a 4X children's safety factor are flawed. The commenters claim that, even assuming that RBC values are relevant, EPA's conclusion that RBC effects in the relevant studies were four times more sensitive than brain effects is not mathematically supportable. The commenters reference statistical analyses performed for them by a contractor, which they claim show that EPA's calculation of the 4X children's safety factor is simply incorrect. The commenters complain that the datasets EPA used for brain differ not only because they were from different studies, but also because the data were taken at different times ranging from 15 minutes to 4 hours after dosing. The commenters also raise the concern that EPA's decision to combine data for different strains of rats, sexes, experiments, laboratories, dates, dose preparations, rat ages, and times between dosing and AChE measurement, is problematic, claiming that these differences in study design severely limit the validity of EPA's comparisons. In addition, the commenters claim to have found a number of errors and inconsistencies in how the modeling was conducted. Correcting for these errors, the commenters claim, shows that the

BMDs for brain and RBC data are essentially the same.

As discussed at length below, and in EPA's Response to Comments document, EPA disagrees that its statistical modeling was in any way flawed (Ref. 112).

In general, EPA believes that consideration of all available data is the scientifically more defensible approach, rather than the selective exclusion of reliable data. The Agency's Draft BMD Guidance says the following: ''Data sets that are statistically and biologically compatible may be combined prior to dose response modeling, resulting in increased confidence, both statistical and biological, in the calculated BMD'' (Ref. 100). The Agency's carbofuran analysis has included all available, valid data in its analysis. Further regarding combining data from multiple strains, the SAP was fully aware that the Agency was planning to derive BMD estimates from data sets using different strains of rats (Ref. 43).

By contrast, the commenters' suggested analysis ignores relevant, scientifically valid data. The FMC analysis left out the 30–minute data from MRID no. 47143705. The commenters have provided no rationale as to why it would be appropriate to selectively exclude data from the time frame in this study most relevant to the risk assessment (*i.e.*, peak AChE inhibition). The commenters' analysis of the individual datasets from MRID no. 47143705, showed that at 30 minutes the females and males provide $BMDL_{10}$s of 0.009 mg/kg/day and 0.014 mg/kg/day, respectively. When the datasets were combined, inclusion of the 30–minute timepoint from MRID no. 47143705 decreased the $BMDL_{10}$ from 0.033 mg/kg/day to 0.030 mg/kg/day.

EPA has used a sophisticated analysis of multiple studies and datasets to develop the PoD for the carbofuran risk assessment. However, instead of this analysis, EPA could simply have followed the general approach laid out in its BMD policy (Ref. 100), which is used in the majority of risk assessments. Under this general approach, EPA would regulate using the most sensitive effect, study, and/or dataset. If the Agency chose not to combine the data in its analyses, as the commenters' suggested, data collected at or near the peak time of effect (*i.e.*, 30 minutes) would in fact provide the more relevant datasets. If this more simple approach were taken, in accordance with BMD guidance, EPA would select the lowest $BMDL_{10}$. Assuming the commenters' values were used, EPA would have selected a PoD of 0.009 mg/kg/day, instead of 0.03 mg/kg/day, which is the value EPA is currently using in its risk assessment.

Further, the commenters complain that EPA's approach of combining data across multiple studies is scientifically inappropriate. The commenters have, however, combined the results of analysis from four datasets. It is notable that most of the issues cited by the commenters also apply equally to the commenter's own analysis, as described in more detail in EPA's Response to Comments document (Ref. 112).

EPA has addressed all of the commenters' claimed inconsistencies in its Response to Comments document (Ref. 112). The majority of these claimed flaws and inconsistencies were either misunderstandings by the commenters or areas where it was the commenters who were incorrect, not EPA. However, in response to some of their allegations, EPA conducted new analyses to determine whether the suggested alternative approaches would make any significant difference in EPA's modeling outcomes. For example, in response to one of their comments, EPA used the dose-time-response model to extrapolate BMD_{50}s to develop a common point of comparison between all studies. Specifically, EPA extrapolated the PND11 brain analysis to estimate BMD_{50} for 40 minutes after dosing for comparison with the existing PND11 RBC BMD_{50}, and extrapolated the PND11 RBC BMD_{50} to 15 minutes after dosing for a range of assumed recovery half-lives, for comparison to the existing PND11 brain BMD_{50} (Refs. 30 and 31). In either approach, the estimate of the RBC to brain potency ratio in PND11 animals is increased, and EPA's safety factor would correspondingly increase to reflect that larger difference. For example, when the PND11 brain BMD_{50} is extrapolated to 40 minutes, the RBC to brain potency ratio grows to 4.7 (Ref. 30), and when the PND11 RBC BMD_{50} is extrapolated to 15 minutes, using a range of estimates for the recovery half-life of the RBC endpoint, the RBC to brain potency ratio ranges from 4.2 to 4.6 (Ref. 31). The commenter's approach would therefore support a children's safety factor of 5X rather than 4X.

Similarly, in response to the complaint that EPA should have generated a new dose-response model in order to calculate the BMD_{50}s for brain and RBC, EPA conducted the suggested calculation (Ref. 112). The ratio of brain to RBC BMD_{50}s in this new analysis is the same as that calculated by EPA using the mathematical expression. Both provide a ratio of brain to RBCs BMD_{50} of 4X. Specifically, the values are for PND11 brain BMD_{50} 0.35 and for RBC, 0.086, resulting in a ratio of 4.09 (Ref. 112).

Several commenters disagreed with the Agency's decision to apply a 4X, arguing that the high bar set by the statute for lessening the tenfold safety factor has not been achieved because ''important data gaps exist.'' These commenters raised the concern that key data on carbofuran toxicity and exposure for the very young are inadequate. Examples include: No data were presented for pre-natal sensitivity as would have been desirable for addressing the need to protect developing individuals; BMD_{10} estimates from the available RBC AChE inhibition data are not reliable due to lack of data at the low end of the dose response curve. The commenters also highlighted EPA's assumption that the RBC and brain AChE dose response curves are parallel, noting that there are currently no data to test this assumption for carbofuran. One commenter raised the concern that ''EPA has no substantial research on alternate mechanisms of carbofuran toxicity. EPA has acknowledged but failed to incorporate in its assessment the potential for lasting adverse effects from transient exposures during fetal and newborn life-stages, and EPA has acknowledged that there are uncertainties in the available data (as raised by the SAP).'' The commenters concluded that the Agency does not have the requisite ''completeness of data'' required by law to lessen the safety factor,'' and urged the Agency to reinstate the default 10X safety factor.

Section 408(b)(2)(C) of the FFDCA requires that EPA consider the ''completeness of data with respect to exposure and toxicity to infants and children'' when evaluating whether retention of the default 10X safety factor is appropriate. The Agency has concluded that available exposure information is sufficient for purposes of developing its human health risk assessment, and has adequately accounted for the lack of certain hazard information with the retention of a 4X children's safety factor. Moreover, the Agency has concluded that the exposure assessment does not substantially underestimate food or water exposure. The completeness of the hazard database and the interpretation of available toxicity studies were described elsewhere in this final rule preamble. The Agency continues to believe that a 4X children's safety factor is appropriate for carbofuran.

Several commenters alleged that application of a 4X children's safety factor, rather than a 10X, is inconsistent with the SAP's advice. These

commenters argued that the SAP report reflected strong support, if not unanimity, among panel members for a safety factor of at least fivefold, and pointed to the statement in the report that ''some Panel members considered it reasonable to retain the full 10X [children's] safety factor (Panel Scenario 5). Given the uncertainty in the data and in its interpretation for risk assessment by the entire Panel, these Panel members believed that this standard for change had not been met.''

As described in detail in the Agency's response to the SAP report (Ref. 109), the Agency believes there was a general consensus that a children's safety factor of 2X or greater was necessary. The Agency does note that one Panel member thought a 1X was appropriate and at least two believed a 2X was appropriate. Given that the Panel did not take a vote on the record and the report notes that the Panel did not endorse a particular approach, any conclusions about the possible ''unanimity'' of the Panel is speculation. However, as described in the Agency's response to the SAP and in the July 2008 proposed rule, EPA believes that on balance, its reliance on the data derived factor of 4X is consistent with the SAP's advice, as a whole.

Several commenters raised concern that EPA's application of a 4X children's safety factor did not adequately account for the differences between children and adults. The commenters raised several reasons that children are more vulnerable than adults to carbofuran. These include the following:

(1) Children are growing. Pound for pound, children eat more food, drink more water and breathe more air than adults. Thus, the commenters conclude, they are likely to be more exposed to substances in their environment than are adults. Children have higher metabolic rates than adults and are different from adults in how their bodies absorb, detoxify and excrete toxicants.

(2) Children's bodies, including their nervous, reproductive, digestive, respiratory and immune systems, are developing. This process of development creates periods of vulnerability. Exposure to toxicants at such times may result in irreversible damage when the same exposure to a mature system may result in little or no damage.

(3) Children behave differently than adults, leading to a different pattern of exposures to the world around them. For example, they exhibit hand-to-mouth behavior, ingesting whatever substances may be on their hands, toys, household items, and floors. Children play and live in a different space than do adults. For example, very young children spend hours close to the ground where there may be more exposure to toxicants in dust, soil, and carpets as well as low-lying vapors.

(4) The recovery time from carbofuran exposure for the very young is more than four times that of adults, as the SAP noted.

Carbofuran does not have any residential uses. As such, comments about the breathing rate of children and hand-to-mouth behavior do not apply to carbofuran's risk assessment. The Agency agrees with the commenters that infants and children represent a potentially susceptible lifestage to carbofuran exposure. Accordingly, the Agency has taken steps to incorporate lifestage specific information in its risk assessment. For example, the Agency's hazard assessment has used data from PND11 rat pups as the PoD in extrapolating human risk. Although it is not possible to directly correlate ages of juvenile rats to humans, PND11 rats are believed to be close in development to newborn humans (Refs. 5, 12, and 26). The Agency's food exposure assessment relies on DEEM-FCID™, which uses the CSFII database, including the 1998 supplemental survey of children. As such, the Agency's aggregate risk assessment accounts for the decreased metabolic capacity of juveniles in addition to age-specific behaviors in eating and drinking.

One commenter noted that while they agreed that the use of brain and RBC AChE inhibition data is an appropriate endpoint for use in EPA's risk assessment, they did not believe that it is sufficiently health-protective to only rely on this endpoint without an uncertainty factor because it has not been established scientifically that AChE inhibition is the most sensitive endpoint. The commenter noted that one SAP member argued for retaining a 10X children's safety factor because of uncertainty in both the dosimetry in subtle developmental effects and also the available data on related pesticides suggesting effects on nerve outgrowth at cholinesterase inhibition levels of 20% or less, and some effects at less than 10%. The commenter asserted that ''this position is supported by published studies on the toxicity of a related family of pesticides, the OPs, reporting that exposures during fetal and newborn life-stages affect diverse cellular functions by mechanisms of toxicity that are independent of cholinesterase inhibition, and may occur at exposures that elicit less than 20% inhibition (Refs. 1, 2, 32, and 91). This is important because while the systemic toxicity that results from cholinesterase inhibition is reasonably well characterized, it does not explain why rodents exposed pre- and post-natally seem to recover from cholinesterase inhibition relatively rapidly, yet display persistent and more severe damage to the central nervous system'' (Ref. 90). The commenter also pointed to what they assert is a ''growing body of science for OPs demonstrating that non-cholinergic mechanisms of toxicity may be acting to disrupt multiple brain targets'' (Ref. 80). According to the commenter, experts have warned that ''the fact that alterations in neurodevelopment occur with OPs below the threshold for cholinesterase inhibition reinforces the inadequacy of this biomarker [cholinesterase inhibition] for assessing exposure or outcome related to developmental neurotoxicity'' (Ref. 92). When reviewing the EPA assessment of the OPs, the commenter asserted that the FIFRA SAP in 2002 had raised the same concern, stating that ''reliance on a single biochemical assay to measure brain damage may become problematic'' (Ref. 41).

The Agency is aware of the available studies noted by the commenters on the OPs and has recently developed a draft issue paper on many such studies as part of its on-going review of chlorpyrifos. The Agency cautions the commenters against extrapolating these studies to the NMCs. The Agency is not aware of any studies in laboratory animals where long-term behavioral or other effects were noted with exposure to NMCs. Moreover, the Agency is not aware of any epidemiology study that has associated NMC exposure with adverse birth or neurodevelopmental outcomes in children. Although OPs and NMCs both inhibit AChE, the chemical reaction at the active site differs. This difference leads to different time courses of toxicity and recovery. Time to peak effect and time to recovery for the NMCs is very rapid in comparison to OPs. Moreover, once reactivation of the AChE occurs, the parent compound is no longer active. As such, NMCs may not be present in the body long enough to cause the types of outcomes associated with OP exposure. The Agency concludes that there are no data which link NMC exposure, including studies with carbofuran, at relatively low doses to long-term outcomes in juvenile animals or children. Therefore, the Agency further concludes that the OP studies noted by the commenters have limited relevance to the carbofuran human health risk assessment.

c. *Comments regarding consistency in approach*. One group of commenters

claimed that the derivation of carbofuran's PoD and children's safety factor was inconsistent with EPA's analyses for other NMCs, including aldicarb and carbaryl.

The commenters are incorrect. The Agency's recent hazard assessments of carbaryl and aldicarb are each consistent with OPP policies and practice, as well as with the Agency's approach to the assessment of carbofuran.

The commenters' assertions regarding aldicarb were based on an earlier assessment. At the time the Agency conducted the assessment to which the commenters refer, the Agency was unaware of the differences in sensitivity between PND17 and PND11 animals. Since EPA became aware of the differences, EPA has required the aldicarb registrant to conduct a CCA study in PND11 rats; the Agency anticipates the receipt of this study and the companion range-finding and time course studies in 2009. In the absence of these data, EPA will apply the statutory default children's safety factor to account for the additional sensitivity of PND11 animals, because the Agency lacks any data that could be used to derive a reduced factor that EPA could determine will be ''safe for infants and children.''

Carbaryl was not evaluated any differently than carbofuran. EPA's typical practice which was used in both the carbofuran and carbaryl risk assessments, is to use the central estimate on the BMD to provide an appropriate measure for comparing chemical potency and to use the lower limit on the central estimate (*i.e.*, BMDL) to provide an appropriate measure for extrapolating risk. This approach is also consistent with the NMC cumulative risk assessment (CRA) and single chemical risk assessments for multiple OPs.

In the case of carbaryl, the commenters inappropriately focused on the $BMDL_{10}$s, instead of the BMD_{10}s. The more appropriate comparison is between the BMD_{10}s; the carbaryl brain BMD_{10} is 1.46 mg/kg/day compared with the RBC BMD_{10} of 1.11 mg/kg/day. As such, the brain to RBC ratio is 1.3X. Therefore, for carbaryl, the brain and RBC AChE data are similarly sensitive, and, when the tissues are similarly sensitive, the Agency prefers to use data from the nervous system tissue (*i.e.*, brain) over data from a surrogate tissue (*i.e.*, RBC) (Ref. 108). Thus, for carbaryl, the RBC AChE inhibition (a surrogate for PNS AChE inhibition) and brain AChE inhibition were basically equivalent. This contrasts with the situation with carbofuran where a significant difference in AChE inhibition between the two is noted.

With regard to the carbaryl children's safety factor, the available brain and RBC dose-response data in PND11 pups include data from the lower end of the dose-response curves. ORD's comparative AChE data with carbaryl show that at the lowest dose at or near 20% inhibition in brain and RBC AChE was observed. Although not ideal, the carbaryl data provide information closer to the benchmark response of 10%, which allows for a reasonable estimation of the BMD_{10} and $BMDL_{10}$. This is distinctly different from ORD's data with carbofuran in PND11 and PND17 pups where 50% or greater RBC AChE inhibition was observed at the lowest dose.

C. Comments Relating to EPA's Exposure Assessment

1. *Food exposures*. One group of commenters alleged that it is more appropriate to apply USDA PDP residue monitoring data from winter squash to pumpkins, rather than residue data from cantaloupes.

The Agency agrees with the commenters. An appropriate residue assignment has been made in the latest dietary exposure assessment (Ref. 71). The results of this assessment are discussed below in Unit VIII.E.1.b.

One group of commenters asserted that the measurable residues of carbofuran in milk obtained by the USDA PDP program should be ''adjusted to a lower level because a significant proportion of the milk residues in the PDP database are due to carbofuran use on alfalfa, which is no longer permitted under the carbofuran label.'' The same commenters discussed the results of an exposure assessment that they apparently conducted, in which they have reduced the residues anticipated to be found in milk by some unspecified amount.

Based on the commenters' results, their adjustments to milk residues appear to have about a 50% reduction on the risk estimates for the food only results. While the commenters appeared to have made the adjustments to milk residues in most of their food-only assessments, as well as their food+water assessment, they did not: (1) Describe the amount by which residues were reduced; (2) present the DEEM-FCID™ input files detailing the residue inputs used in their assessment; or (3) provide to the Agency related data to support any such reduction factor—information that the Agency would need to accept such an adjustment. Because of the lack of any explanation or rationale, the Agency attempted to determine how the commenters made the ''adjustment to residues'' to account for the cancellation of use on alfalfa. As described in the Agency's Response to Comments, EPA was not able to reproduce the commenters' results, but did approximate their reported results after reducing milk residues by 77% (Ref. 112).

In actuality, it is difficult to ascertain how the recent cancellation of carbofuran use on alfalfa may affect future residues found on milk (from dairy feed items associated with corn, potatoes or sunflowers). This is especially true for milk since it is a blended commodity. That is, milk may be obtained from dairy cows from multiple farms (*i.e.*, a dairy cooperative). The milk in any particular PDP sample may have come from dairy cows that might have had a diet that contained substantial amounts of alfalfa, or a diet that contained predominately corn, or from multiple farms using various combinations of feed that may or may not have been treated with carbofuran. In any case, the aggregate pesticide use statistics do not support the contention that most residues in milk are (or have been) due to carbofuran use on alfalfa—the USDA and Proprietary use data indicate that field corn has historically had a greater overall amount of total carbofuran use than alfalfa. Potatoes and sunflowers rank 3rd and 4th.

The Agency included a summary of dietary burdens for dairy cattle in the dietary exposure analysis memorandum documenting the higher dietary burden involved with field corn feed stuffs (Refs. 70 and 71). These two diets represent a corn-based diet and an alfalfa-based diet, accounting for appropriate amounts of roughage and protein. Based on these dietary burdens, milk from dairy cows having a corn-based diet may have higher concentrations of carbofuran than milk from cows having an alfalfa-based diet (Refs. 70 and 71).

The Agency notes that 3-hydroxy carbofuran was detected in about 7.5% of all PDP milk samples analyzed in 2004 and 2005 (7.5% = 110 detects in 1,485 samples).

Considering all of the various factors involved with the PDP milk samples–*e.g.*, uncertainty regarding mixture of feeds, pesticide use and corresponding residues—the Agency finds no basis for applying estimated reduction factors to actual measured concentrations of carbofuran residues found by the PDP program in milk based on the cancellation of alfalfa uses. In the absence of supporting data the Agency has no scientific basis for making the

commenters' recommended changes to the dietary exposure assessment with regard to carbofuran residues in milk. Certainly, the commenters' have failed to provide any scientific justification for their position. Moreover, since the Agency was unable to reproduce the commenters' results, EPA could not make the suggested adjustment, even if they had provided details on the exact adjustment figure they wanted EPA to apply.

One group of commenters raised concern that PCT estimates used by the Agency for bananas, potatoes, and milk are conservatively high.

In response to those comments, the Agency reviewed its PCT estimates for the two crops and revised its PCT estimates for bananas from 78% to 25%. The Agency also developed a regional PCT estimate for potatoes of 5% based on projected limited use in the Northwest, and has applied these estimates in its revised dietary risk assessment (Ref. 71). The Agency also applied a 5% CT for milk, based on the PCT for potatoes, which is the feed stuff with the highest PCT. Further discussion regarding the Agency's previous and revised PCT estimates can be found in References 71 and 122. As discussed below in Unit VIII.E.1.b., these adjustments had relatively modest effects on the dietary exposure assessment of those crops the registrant now seeks to maintain.

Some commenters claimed that the Agency acted inconsistently in the way in which it conducted its ''Eating Occasion Analyses'' to account for the extent to which individuals recover from AChE inhibition between exposure events. The commenters claimed that the Agency analyzed aldicarb and carbofuran differently, and came to different conclusions concerning the effects of reversibility for these two compounds.

The commenter's assertion that the Agency came to different conclusions concerning the effects of reversibility for aldicarb and carbofuran is incorrect. EPA discusses the Eating Occasion Analysis it conducted for carbofuran in greater detail in Unit VIII.E.3. below and in its Response to Comments document (Ref. 112).

The Agency concurs with the commenter that ''there is no basis for treating aldicarb-treated potatoes differently from carbofuran treated potatoes.'' The commenters' assertions regarding what the Agency has or has not done with respect to the Eating Occasion Analysis (*i.e.*, ''reversibility'') to some extent reflects confusion resulting from the several assessments the Agency has produced since 2006. Since that period, EPA has conducted several risk assessments, based on the tolerances FMC has variously indicated that it wished EPA to retain. EPA notes, for clarity, that for the proposed rule, EPA conducted a risk assessment of ''all registered carbofuran uses'' that did incorporate the concept of reversibility (*i.e.*, ''persisting dose''). The proposed rule also contained an assessment of the subset of ''6 domestic uses'' that EPA believed the registrant primarily wished to retain, which did not incorporate this concept because these were not the only crops on which carbofuran was legally permitted to be used. However, now that the registrant has cancelled all but four domestic food uses, the Agency's risk assessment of all the remaining uses accounts for reversibility, performed using the same DEEM-based Eating Occasion Analyses previously used for both carbofuran and aldicarb.

In support of their contention, the commenters took an observation in the aldicarb IRED that exposures did not pass at the per capita 99.9th percentile, but were equal to the aPAD at a lower percentile—out of context, and used that statement to infer that the Agency regulates at this lower percentile. This is incorrect. The aldicarb registrant agreed to a number of risk mitigation measures that brought the aggregate risks to below the aPAD at the 99.9th per capita percentile. The registrant agreed to modify the aldicarb label to require a 500–foot well set back for aldicarb use on peanuts (GA soil type), since aggregate exposure at the per capita 99.9th percentile for infants continued to exceed the level of concern even after reversibility was accounted for in the Eating Occasions Analyses under the 300–foot well set back scenario.

In summary, the Agency did not analyze aldicarb exposure and risk any differently than it analyzed carbofuran exposure and risk; the ''persisting dose'' concept was used in both assessments. Mathematically and conceptually, the calculations of the adjustment for reversibility are the same for both exposure assessments. Any differences in the conclusions EPA drew from the analyses are attributable purely to the factual differences between the two compounds. The reduction in ''persisting dose'' is slightly greater for aldicarb due to its quicker recovery times (2–hour half-life for aldicarb), but in both cases, the Agency applied the same procedure to account for reversibility. The qualitative results for the food only and food + water scenarios presented in Unit VIII.E., produce similar qualitative results: in both cases, accounting for reversibility between eating occasions for food alone results in relatively modest reductions in the ''persisting dose'' at the per capita 99.9th percentile, and a relatively large effect on exposure for water alone, or food+water, when water is the predominant contributor (73 FR 44864). These Eating Occasion Analyses support the Agency's position that reversibility has a relatively greater effect for drinking water exposures than for food exposures.

One group of commenters claimed that the Agency should have calculated the effects of carbofuran exposure based on the ''persisting dose'' over the 1,440 person-minutes rather than on the person-days that are currently used by the Agency.

In effect, the commenters suggest that the ''persisting dose'' should be calculated over the entire 1,440 minutes of each modeled person-day (1,440 minutes/day = 24 hrs × 60 minutes/hr). EPA has rejected this approach for a number of reasons. While the commenters' person-minute approach may be an attempt to capture multiple measures with one statistic, it does not properly capture the Agency's concern regarding peak inhibition, and the commenters' assertion that the Agency should use all person-minutes to calculate the per capita 99.9th percentile is misguided at best since: (1) It does not reflect a comparison to peak inhibition which is what the Agency believes is the most appropriate and relevant toxicological measure and (2) it produces risk estimates that are entirely dependent upon the time of day at which consumption occurs. Hence, this approach will obtain different values depending upon the reported time of consumption even if exposure occurs on a single eating occasion. The commenters suggested approach does not appear to capture peak inhibition, or other temporal aspects of cholinesterase inhibition (*e.g.*, duration over which inhibtion exceeds 10%). EPA's Response to Comments document provides a further explanation of this issue and details why the Agency's approach is consistent with the identified endpoint (peak inhibition) and the corresponding point of departure ($BMDL_{10}$ that serves as the basis for calculating a %aPAD (Ref. 112).

2. *Drinking water exposures.* As part of their comments on the proposed tolerance revocation, FMC submitted a revised label with use restrictions intended to address drinking water contamination. These measures include eliminating a number of crop uses, prohibiting use in a broad swath of areas with potentially vulnerable soils, and

requiring application buffers in other areas. In addition to these label modifications, the registrant, along with two other commenters, submitted comments summarizing the results of risk assessments they had previously submitted, and the results of new risk assessments they claim to have conducted. The commenters did not provide to the Agency either the new risk assessments they claim to have conducted, or the underlying support documents for those assessments, including the ''national leaching assessment'' or the ''crop-specific evaluation of use patterns and the registrant's proposed non-application buffers using the PRZM-EXAMS model.'' FMC concludes that their label revisions have a pronounced effect on dietary risk and result in ''exposure that even fit within the risk cup that EPA has proposed.''

EPA has reviewed the September 2008 proposed label modifications, and a synopsis of the Agency's conclusions are summarized below in this Unit. More detailed analyses can be found in EPA's Response to Comments (Ref. 111). In addition, EPA's revised risk assessment, discussed below in Unit VIII.E., is based on this revised label.

The label revisions leave two national food uses on the label, corn and sunflowers, and two regional food uses, potatoes in the northwest and pumpkins in the southeast. EPA has assessed the impact of all of these remaining uses, taking into consideration all label restrictions, and has concluded that remaining uses may result in concentrations in some locations that are similar in magnitude to those estimated previously (Refs. 57, 58, 60, and 62).

a. *Comments relating to EPA's ground water analyses*. One group of commenters alleged that ''[g]roundwater sources are vulnerable to carbofuran leaching only under certain conditions, namely where permeable soils (*e.g.*, areas with soils greater than 90% sand and less than 1% organic matter), acidic soil and water conditions, and shallow water tables predominate (*e.g.*, where ground water is less than 30 feet).'' The commenters claim that these conditions are rare in areas where carbofuran is used. They further assert that in ''most states where carbofuran is used, less than 2% of the entire surface areas possess sandy soil texture'' and that ''low pH conditions are not found in carbofuran use areas allowed under the registrant's amended label''.

EPA disagrees that the commenter's specific criteria define 100% of conditions where ground water sources are vulnerable to carbofuran leaching. No comprehensive analysis was provided evaluating how they reached this conclusion. Although these criteria appear on the revised carbofuran label restricting use, the spatial extent of the label restrictions is not provided. As discussed in greater detail in EPA's Response to Comments, the information provided as part of FMC's comments (primarily maps depicting areas identified as vulnerable) is not sufficient to allow the Agency to evaluate their claim (Ref. 111). For example, water table depth can vary with the time of the year, depending on such factors as the amount of rainfall that has occurred in the recent past, and how much irrigation has been removed from the aquifer. It is difficult to determine how the depth to the water table varies throughout fields, and the definition of a ''shallow'' water table is indeterminate (*e.g.*, less than 30 feet). Furthermore, the vulnerability associated with depth varies with location; for example, deeper aquifers may be more vulnerable in areas with greater precipitation and rapid recharge.

While the assertion regarding percent sand is in part true, it is misleading. While many states have only small areas of sandy soils, some states have quite extensive areas. For example, according to FMC's own assessment of high use states (Ref. 8), Texas had 4.2% sand, Michigan had 21.3% and Nebraska had 26.3%. In addition, this statement implies that soils that are sandy textured define the universe of soil textures that are vulnerable to leaching. It is possible that more fine-textured soils, for example sandy loams or silt loams, could also be sufficiently permeable to result in carbofuran leaching as it has not been established how much of a reduction in leaching might occur as texture becomes finer. Furthermore, finer textured soils tend to have more cracks and root channels and thus are more prone to preferential flow.

EPA also disagrees that the commenters have provided sufficient information to support their general claim that only high pH conditions (pH above 7) exist in all the areas in which carbofuran could be used under FMC's September 2008 revised label. There is considerable spatial variability in pH conditions for both the subsurface and surface environments. The pH has a large effect on the persistence of carbofuran as, for more acidic conditions, the hydrolysis half-life increases from 28 days at pH 7 to years or more at pHs less than 6. Further, the results of EPA's corn ground water simulations (bounded by the high and low pH values of the aquifer system underlying the scenario location) showed that a relatively small (0.5) decrease in pH from 7 to 6.5 resulted in an increase by 4 orders of magnitude in the 1–in–10–year peak concentration of carbofuran. EPA has presented its assessment of the newly submitted label in its Response to Comments document and these issues are addressed in more detail there (Ref. 111).

Accordingly, the criteria the commenters suggest are not sufficient to prohibit use in all areas that could reasonably be expected to be vulnerable to ground water contamination from carbofuran use. EPA's assessment identifies an example of one area where carbofuran use would still be permitted on the proposed labels; an additional scenario for the updated ground water modeling provided in Reference 111 was based on this location in the south-central region of Wisconsin. This scenario is in no way unique; EPA expects that other similar sites exist in other locations where carbofuran could still be used across the United States.

One group of commenters claimed that the most recent label modifications ''has ensured that carbofuran use will not occur in these vulnerable areas by removing them from the label.'' They support this by reference to a map of the carbofuran use areas in 2005, that identifies counties with DRASTIC scores as high as that of the location of the prospective ground water study (PGW study) conducted by FMC in Maryland, defining that combination as vulnerable.

DRASTIC is a USEPA model that was developed as a screening tool to identify ground water resources that are ''generally vulnerable to the release of contaminants at the surface * * *.'' (Ref. 6). The commenters indicate that the map provided in their comments shows counties ''identified as vulnerable,'' based on DRASTIC scores that exceed 185, and 2005 carbofuran usage, although the map's level of resolution is insufficient to provide more than a general impression of the location of ground water classified as vulnerable. In FMC's September 2008 label revisions, FMC expanded the areas where carbofuran cannot be applied, apparently because of ground water concerns. The specific criteria that FMC used to determine these further locations were not provided to the Agency. Nevertheless, EPA does agree that ground water in the Atlantic Coastal Plain is vulnerable, and that FMC has restricted use in those areas.

However, EPA does not agree with the premise that only locations with DRASTIC scores as high as that of the location of the Maryland PGW study are those that require mitigation. DRASTIC

scores as high as those identified by the commenters would indicate that the site is located in a generally sensitive or vulnerable area. The Agency agrees that the DRASTIC tool can be used to generally identify areas that may be vulnerable to pesticide contamination. However, DRASTIC is somewhat dated (1987), and better methods currently exist that can take advantage of geospatial data at a more refined level than the county level used here. FMC apparently agrees with this criticism since they subsequently developed the ''National Leaching Assessment'' as part of their comments on the proposed tolerance revocation, to replace their earlier DRASTIC assessment.

Importantly, EPA believes that FMC has used an inappropriate criterion for determining whether a site is vulnerable–that it has the same or greater vulnerability (based on a DRASTIC score greater than 185) as that of the Maryland PGW study site. The maximum concentration at the Maryland PGW site, adjusted to simulate an application rate of 1 lb/acre, was 21 µg/L this exceeds acceptable exposure thresholds by factors of 10 to 20 (Ref. 71). Thus, sites that are less vulnerable (*e.g.*, deeper aquifer, high soil sand content, higher organic matter), with lower DRASTIC scores, could still be prone to have carbofuran concentrations exceeding acceptable exposures.

Further, the commenters provide no detail on the specific data used to generate their DRASTIC estimates. In footnote 39 of their comments they indicate that ''Data to support these [DRASTIC] inputs were primarily collected from state-wide, statistically designed studies conducted by state and federal agencies (primarily the National Water Quality Assessment Program (''NAWQA''), but also state surveys and other state and federal agricultural data, where NAWQA data were not available.'') Given EPA's general reservations about their approach, EPA cannot conclude that the commenters' assessment is scientifically supportable or useful, without information on the sources of the data, the geographic scale of the data, or how that input data was prepared for the analysis.

One group of commenters assert that their ''assessments revealed that the soils and water pHs are generally higher in those states in the Midwest and Northwest where most carbofuran is used, providing further confirmation that conditions that favor carbofuran leaching in those areas do not exist.''

Since the commenters have not provided all of the assessments they appear to have conducted, EPA is unable to confirm whether their assessments do in fact support their contention. However, as a general matter, none of the previously submitted assessments provided a comprehensive analysis of the distribution of soil and water pHs for the Midwest, Northwest or any other region of the country where carbofuran use would be permitted on the September 2008 label, nor have the commenters provided such an analysis with their most recent comments. Further, the available scientific information does not support their contention.

EPA examined readily available data with respect to ground water and soil pH in order to evaluate the spatial variability of pH. Data from the United States Geological Survey (USGS) and other readily available sources do not necessarily encompass the entire range of ground water pH values present within a state. This is especially true for shallow ground water systems, where local conditions can greatly affect the quality and characteristics of the water. Also, pH in a water body can be higher or lower than the tabulated average values. In addition, average ground water pH values for a given area do not truly characterize the area's temporal and especially spatial heterogeneity. This can be seen by comparing differences in pH values between counties within a state, and noting that even within a county individual wells will consistently yield ground water with either above- or below-average pH values for that county. The ground water simulations in Reference 111 Appendix I reflect variability in pH by modeling carbofuran leaching in four different soil and subsurface pH conditions (pH 5.25, 6.5, 7.0, and 8.7), representing the range in the aquifer system in that area. This range also approximates the pH range of natural waters in general. The results of the ground water simulations for corn use showed that a relatively small (0.5) decrease in pH from 7 to 6.5 resulted in an increase in the 1–in–10–year peak concentrations of carbofuran in ground water of 4 orders of magnitude.

FMC summarized the results of their ''National Leaching Assessment'' which used PRZM and ''databases specifically created to provide access to all necessary inputs for a national scale PRZM modeling.'' They claim that after accounting for the use prohibitions on their September 2008 label, the maximum 1–in–10–year peak concentrations in all potential carbofuran use areas is 1.2–1.3 ppb, while expected concentrations in most areas covered by this assessment are below 1.0 ppb. They claim to have modeled a single application to corn at 1 lb/acre—which is the application rate on the September 2008 labels applicable to the rescue treatment on corn—and simulated ground water recharge and lateral flow. They assert that their estimate that 1–in–10–year peak carbofuran concentrations will not exceed ''~1 ppb'' is consistent with EPA's NMC CRA.

Neither the ''National Leaching Assessment,'' nor the ''National Pesticide Assessment Tool'' upon which the assessment appears to have been based, were submitted to EPA for review, therefore EPA cannot comment further on the methodology for reaching these conclusions, or indeed, whether the assessment actually supports their claims. Based on the information provided, EPA cannot confirm or negate the assertion that there is no overlap between use and all potentially vulnerable ground water, as the information provided does not enable the Agency to evaluate this claim.

EPA's assessment of the impacts of FMC's September 2008 label differs significantly from the commenters' summary conclusions; these differences are addressed more completely in EPA's Response to Comments document, and are based on application by FMC of unsupported factors (Ref. 111).

Part of EPA's assessment of ground water exposure for the proposed tolerance revocation was based on simulation modeling using PRZM for corn grown on the Delmarva Peninsula in Maryland receiving an annual application of 1.0 lb/acre-1. The 1–in–10–year peak estimated drinking water concentration (EDWC) was 30.8 µg/L. FMC's assessment of the same label resulted in their estimate of concentrations up to 22.7 µg/L. The September 2008 labels prohibit application at sites in the Atlantic Coastal Plain with similar vulnerability to the Delmarva site. However, EPA believes that the study and the resulting scenario derived from this study remain relevant for other areas with similar conditions, where use remains. Based on the September 2008 labels, EPA has concluded that there are locations in the United States where carbofuran could still be applied, and in which ground water concentrations are estimated to be high enough to cause concern. For example, simulations of corn grown the central sands region of Wisconsin had an estimated 1–in–10–year peak concentration of 16 µg/L at pH 6.5 and 284 µg/L at pH 5.25, both of which are in the pH range for aquifers in this area (Ref. 115). For higher pH's in that area,

estimated carbofuran concentrations were generally close to zero.

As noted the ''National Leaching Assessment'' has not been provided to EPA for review, and consequently, the Agency cannot determine model input parameters or check model algorithms. In many cases, model inputs cannot be directly inferred from values in the available weather and soil databases (*e.g.*, NOAA SAMSON weather datasets, NRCS Soil Datamart) (Refs. 75 and 93). Methods used by FMC to select or calculate values for model input from these databases were not described. The only model output provided was in map format. While maps are useful for interpreting results, maps alone are insufficient for a thorough evaluation of the assessment, in part because of their spatial resolution. Further, the maps provided by FMC do not represent all carbofuran use patterns. For example, Figure IV-2 on page 42 of FMC's comments does not address the granular use patterns and proposed label prohibitions.

FMC contends that their results are consistent with the NMC CRA, but this is untrue. The NMC CRA examined carbofuran at two sites, northeast Florida and the Delmarva Peninsula. In Florida, concentrations were found to be below levels of concern because of high pH, but in Delmarva, both in corn and in melon scenarios EPA estimated that 90% of daily concentrations could be as high as 20.5 and 25.6 µg/L, respectively. These values are greater than the 1 µg/L that FMC claims is the maximum expected 1–in–10–year peak concentration. The claim that EPA's modeling fails to address use patterns ''changing naturally over time'' is ambiguous, and EPA cannot evaluate any inputs included by FMC to address this in their own modeling, if indeed they did so. Because of these deficiencies, EPA is unable to verify or evaluate the results of FMC's analysis and can reach no conclusion on its validity or utility.

FMC asserts that ''EPA's approach is not consistent with the Agency's treatment of other carbamates. For example, in the aldicarb assessment, EPA used monitoring data to develop eight different region-specific scenarios, 'based on broad similarity in compound usage, crop type or soil conditions', and taking a 'single maximum sample result detected within [each] region during the last 5 to 10 years to represent ground water concentrations within that entire region.' The Agency estimated drinking water concentrations for risk assessment purposes by accounting for the effect of ground water mitigation measures (*i.e.*, setbacks).'' In footnote 53 of their comments, FMC apparently quotes from the aldicarb IRED ''[H]igher residue values that may have resulted from historical use if aldicarb in vulnerable areas were excluded.''

EPA disagrees with FMC's assertion that the carbofuran drinking water exposure assessment was not consistent with other carbamates, particularly aldicarb. In both cases, Tier 2 modeling, using the PRZM and EXAMS models, was used to characterize surface water exposure and in both cases available monitoring data were summarized. For carbofuran, ground water exposure was characterized using a combination of targeted and non-targeted monitoring data, a PGW study, and Tier 2 modeling, through the course of two RED chapters and several post-RED drinking water exposure assessments. For aldicarb, two different ground water exposure assessments were conducted for the initial and the final IRED chapters. In the comment quoted above, FMC has described the process used for the aldicarb risk assessment supporting the initial aldicarb IRED dated May 12, 2006.

The second aldicarb ground water exposure assessment supported the revised dietary exposure assessment in February 2007 (Ref. 48). This is a more refined assessment, which relies on simulation modeling for ground water using PRZM in places vulnerable to ground water leaching where aldicarb was used. While FMC has correctly quoted ''[H]igher residue values that may have resulted from historical use of aldicarb in vulnerable areas were excluded,'' the implication that this is different from EPA's evaluation of carbofuran is not correct. For example, the carbofuran IRED describes monitoring in New York where carbofuran use was canceled in 1984, and where detections of carbofuran continue. The carbofuran IRED did not use the high concentrations of carbofuran measured in drinking water wells in that study, up to 178 ppb, which resulted from historical use of carbofuran. In both cases, historical monitoring data were described (Refs. 10 and 47), but endpoints used for ground water exposure assessment were only based on monitoring relevant to use patterns current at the time of the assessment. For aldicarb, the Agency utilized retrospective monitoring data collected after 1990. For carbofuran, the most relevant monitoring data set was the Maryland PGW study. Because of the design of that study, results could be adjusted to represent current use patterns.

The aldicarb assessment took into account the impact of well setbacks on estimated concentrations in ground water modeling conducted in 2007. The carbofuran modeling in EPA's most recent assessment also took into account the impact of well setbacks on estimated concentrations in ground water. Previous carbofuran assessments did not assess the impact of well setbacks, as setbacks were not included on a proposed carbofuran label until September 2008.

In summary, both assessments for aldicarb and carbofuran used a combination of monitoring data and simulation modeling for the drinking water exposure assessments, simulating the impact of mitigation measures on the labels.

b. *Comments relating to EPA's surface water assessment.* One group of commenters summarized conclusions based on a previously submitted surface water assessment based in Indiana. Specifically, they claim that: (1) EPA's standard index reservoir scenario overestimates surface water concentrations compared with ''expected concentrations in actual Indiana community water system (CWS) where carbofuran is used,'' (2) ''Indiana CWSs bracket the Index Reservoir scenario (*i.e.*, some reservoirs are more sensitive and others are less); however, in each instance the expected concentrations in the Indiana CWSs were significantly less than those estimated by the Index Reservoir scenario.''

EPA has reviewed the Indiana surface water assessment submitted by the registrant previously, and has provided comments on that submission (Ref. 59). FMC's first major conclusion from this study is that ''EPA's standard index reservoir scenario overestimates surface water concentrations compared with expected concentrations in actual Indiana CWS where carbofuran is used.'' The Index Reservoir is designed to be used as a screen, and as such, represents watersheds more vulnerable than most of those which support a drinking water facility. It is thus protective of most drinking water on a national basis. That, however, does not mean that EPA believes this scenario overestimates concentrations for all drinking water reservoirs. While EPA agrees that it is an appropriate refinement to simulate local and regional watersheds, and has in fact done so (Refs. 58, 60, 61, 62, and 111), EPA does not believe that FMC's assessment refutes the concern for carbofuran occurrence in Indiana surface water source drinking water. Even accepting the Indiana surface water assessment at face value (which we do not), FMC estimated 1–in–10–

year peak concentrations at some facilities as high as 6.88 µg/L, and these concentrations substantially exceed the concentration they now claim represent reasonable estimates.

FMC's second major conclusion has two parts: (1) That the vulnerability of the Indiana CWSs ''bracket'' the Index Reservoir, and (2) that the concentrations they estimated for these locations are significantly less than EPA estimates. Regarding the vulnerability of the CWS, FMC's assessment describes their approach for modifying the parameters of the Index Reservoir scenario to represent 15 reservoir-based watersheds in Indiana cropped in corn. FMC indicates they have included data that, based on our review of these submissions, are not available at the appropriate scale to determine all site-specific parameters. FMC modified some of the parameters based on available data to represent more localized conditions that are more or less vulnerable than for the Index Reservoir. From FMC's description, their approach is similar to the methods that EPA uses to develop new scenarios, in that soil and weather data are varied in order to represent different locations. However, for other parameters, EPA believes FMC's modifications are inconsistent with fundamental assumptions upon which the modeling is based. In submissions made to the Agency, FMC has described that they have made modifications to scenarios to reflect local conditions of each CWS in Indiana by modifying the soil, and weather data and altering the ratio of watershed drainage area to the reservoir capacity (Ref. 120). EPA agrees that soils and weather data can be modified to reflect conditions at local watersheds. However, other modifications FMC made cannot reasonably be justified for all scales without contradicting the assumptions upon which the modeling relies (uniformity of soils, equal and simultaneous movement of runoff to the reservoir, and uniform weather across the watershed).

FMC also calculated their own PCAs for this assessment. The PCA is the fraction of the drinking water watershed that is used to grow a particular crop. EPA uses the maximum PCA calculated for any HUC8 (8-digit hydrologic unit code) watershed in exposure estimates. HUC8s are cataloging units for a watershed developed by the USGS and are used as surrogates for drinking water watersheds. The process by which PCAs were developed and how they are used by the Agency has been vetted with the FIFRA SAP (Refs. 37 and 38). The Agency has developed PCAs for four major crops, corn, soybeans, wheat, and cotton, and uses a default PCA based on all agricultural land for characterizing other crops. The Agency has also calculated regional default PCAs for use in charactering regional differences in drinking water exposure. EPA limited further development of PCAs for additional crops, as a result of FIFRA SAP peer review comments, which concluded that data were not available at the appropriate scale to do so. In their assessment, FMC estimated PCAs for specific watersheds in Indiana. FMC did not provide sufficient detail in their descriptions of how they calculated PCAs to enable EPA to assess their validity.

Regarding FMC's statement that the concentrations they estimated for these locations in Indiana are significantly less than EPA estimates, EPA has determined that FMC has included an adjustment factor to account for the percent of a crop that is treated with carbofuran. As discussed in more detail below, although EPA does evaluate such factors in conducting ''sensitivity analyses'' to understand the impact that various PCT assumptions may have, EPA does not believe that it is appropriate to base its aggregate risk estimates on PCT within watersheds. This is because data and/or methods are not available that would allow EPA to develop PCT at the watershed scale with the necessary level of confidence to allow EPA to make a safety finding. The PCT factors that FMC generated would lead to significantly lower concentrations than those estimated by EPA.

One group of commenters reiterated conclusions from a previously submitted surface water assessment, the ''Nationwide CWS Assessment.'' Based on this assessment, the commenters allege that: ''use intensity in the majority (~ 75%) of carbofuran use areas is less than 2.1 lbs a.i./sq. mi,'' and that based on this use intensity, the commenters' modeling results in surface water concentrations ''that are not above the applicable level of concern.'' The commenters also claim that, because areas with historical use intensities greater than 2.1 lbs. a.i./sq. mi may be more sensitive to carbofuran, the registrant proposed no-application buffers which effectively mitigate the risks in these areas.

EPA has reviewed FMC's ''Nationwide CWS Assessment'' previously and has provided a response to the submission (Ref. 59). It is worth noting that FMC only assessed use intensity for reservoir-based systems and excluded use intensity for all stream- or river-based systems from their assessment.

Similar to the Indiana CWS study discussed in the previous response, this study relied on county-level usage estimates to estimate use intensity. This value was subsequently used in modeling to draw their second major conclusion, which FMC states formed the basis for their decisions to propose no-application buffers to mitigate risks in those areas, their third conclusion. To respond to this comment, therefore, it is important to understand how FMC arrived at these use intensities. Their methods have been poorly described in statements, but EPA was able to piece together a general sense of the methods from the various reports FMC provided to EPA.

To summarize, for FMC's National CWS Assessment, the registrant relied on sales data to generate its use intensity estimates, but these data were not provided to EPA. The method FMC used to generate the county-level use estimates from the sales data is not described. The actual county level use estimates used in the use intensity calculations were not provided. There is a limited description indicating only that the county level use estimates were apportioned to different crops, but the method FMC used to do this was not provided. FMC used an objective method to group the county-level use estimates into 5 classes, but the method is only briefly described. Thus, because EPA cannot determine how use intensity was estimated, the Agency cannot determine if the conclusions made in the National CWS Assessment are justified by the underlying data.

Since carbofuran sales data used for FMC's assessment were not provided in the document submitted to EPA, or with the comments to the SAP (Ref. 33), or with the comments on the proposed tolerance revocation, it was not possible for EPA to determine if FMC's claim that 75% of the use areas have a carbofuran use intensity of less than 2.1 lbs a.i./sq. mi., is accurate. Use intensity data in maps provided in their comments appear to indicate that carbofuran use varies year by year, however, it is also not clear for which year or years FMC is making this conclusion.

EPA agrees that using lower rates of carbofuran will result in lower exposure. But EPA does not agree that it has been demonstrated that a use intensity below 2.1 lbs a.i./sq. mile will assure that surface water concentrations will be below the applicable level of concern. The National CWS Assessment does not justify such a finding, nor has any other assessment that has been submitted to date. The Agency modeled use rates for carbofuran on corn based

on the label proposed in September 2008 and results are described in Unit VIII. and in Reference 111.

EPA is equally unable to confirm the claims that the no-application buffers on the September 2008 labels will adequately mitigate the risks ''in areas with historical use intensities greater than 2.1 lbs a.i./sq. mi.'' On the September 2008 labels, FMC included buffers of 300 feet on water bodies in Kansas, and 66 feet around water bodies in other places, but EPA cannot evaluate how these buffers relate to areas where carbofuran use intensities exceeded a specific value, for all of the reasons stated above. EPA did, however, model the effects from the buffers proposed on the September 2008 labels and found that these buffers reduce exposure by 5.1% (33.5 to 31.8 µg/L) for corn in Kansas with a 300 foot spray drift buffer and 4.7% (29.9 to 28.5 µg/L) for corn in Texas with a 66 foot spray drift buffer. These results are described in more detail in Reference 111, Appendix I.

One group of commenters claimed that EPA's modeling assumptions are ''implausible for most surface water systems across the country.'' They specifically criticize the following assumptions: (i) ''a lack of inflow to or meaningful outflow from the CWS; (ii) instantaneous and homogeneous mixing throughout the entire CWS; (iii) all receiving water directly abut the treated field and there are no buffers; and (iv) a lack of variation in pH across water bodies in the United States.''

All of the commenters' claims are incorrect. Their first contention, that EPA assumes that there is a lack of inflow to or meaningful outflow from the CWS, is incorrect. EPA's modeling assumes the inflow to the reservoir is equivalent to the mean annual runoff into the reservoir. Since the EXAMS model is a steady state model, outflow will equal inflow to the reservoir. Assuming that outflow equals inflow and that mixing occurs instantaneously throughout the reservoir are reasonable assumptions; the commenters made the same assumptions in their modeling. Secondly, the commenters believe the assumption that there is instantaneous and homogeneous mixing throughout the entire reservoir supporting the community water supply is implausible. This is a reasonable assumption for small, un-stratified reservoirs like the Index Reservoir. Also, the commenters made the same modeling assumption in their modeling in the Indiana CWS study, and apparently in the modeling done in support of their submitted comments on the proposed tolerance revocation. Thirdly, the commenters believe it is implausible to assume that all receiving water directly abuts the treated field, and there are no buffers. This claim is also not accurate. Until the September 2008 label, carbofuran labels did not require buffers, thus, EPA did not have reason to assess the impact of buffers. EPA's assessment of FMC's September 2008 labels considered the impact of the buffers (see Ref. 111, Appendix I). Finally, FMC contends that EPA's assumption of pH was implausible. EPA disagrees; EPA's assessment was based on the middle of the range of pH occurring in natural waters. In addition, as a sensitivity analysis, EPA assessed exposure assuming a high pH, representative of a high end pH of waters in Western Kansas, as well as the high end of natural waters in general.

One group of commenters summarizes conclusions from a previously submitted assessment based on the Watershed Regression for Pesticides (WARP) (Ref. 117) model. They claim, based on this assessment that ''[t]he maximum 1–in–10 day estimated concentrations of carbofuran at the 90th percentile level in Illinois, Indiana. Iowa, and Nebraska (where a majority of current carbofuran is located) will be less than or equal to 0.3687 ppb.'' They claim that WARP's 1–in–10–day estimates are a reasonable surrogate for the 1–in–10–year peak concentrations typically relied on by the Agency because ''the extreme nature of a 1–in–10–year event (*i.e.*, severe rain) would result in dilution effects that cancel out any increased loading.'' They also allege that the differences in surface water concentrations estimates in their assessment and EPA's modeling are due to their use of ''actual county-level usage data.''

EPA has reviewed the WARP assessment previously and has provided comments on the submission (Refs. 59 and 117). The WARP model has not been fully evaluated for quantitative use in exposure estimation by the Agency, although it has been preliminarily reviewed by the SAP (Ref. 39). EPA used WARP to select monitoring sites for the herbicide atrazine, based on predicted vulnerability of watersheds to atrazine runoff within the corn/sorghum growing regions. EPA presented its approach to the FIFRA SAP in December 2007. The SAP report concluded that ''WARP appears to be a logical approach to identify the areas of high vulnerability to atrazine exposure,'' endorsing EPA's use of this tool only for atrazine, and for the limited purpose of designing a monitoring program. The SAP noted that the most important explanatory value with WARP was use intensity, and underscored the importance of having the most accurate data for this parameter.

WARP is a regression model developed by the USGS to estimate concentrations of the pesticide atrazine in rivers and streams. As a regression model, it is based on monitoring data, in this case from 112 USGS National Ambient Water Quality Assessment (NAWQA) monitoring locations. WARP does not directly estimate daily concentrations, but predicts the percent of the time in a randomly selected year that concentrations of the pesticide are less than a specified value, with a specified level of confidence. USGS attempted to develop an approach to estimate annual time series for other pesticides, and concluded that ''further data collection and model development may be necessary to determine whether the model should be used for areas for which fewer historical data are available * * * Because of the relative simplicity of the time-series model and because of the inherent noise and unpredictability of pesticide concentrations, many limitations of the model need to be considered before the model can be used to assess long-term pesticide exposure risks.'' (Ref. 126).

The commenter's conclusion that the ''maximum 1–in–10–day estimated concentrations of carbofuran at the 90th percentile level in Illinois, Indiana, Iowa, and Nebraska [* * *] will be less than or equal to 0.3687 ppb,'' is erroneous. WARP does not provide direct estimates of return frequency, *i.e.*, 1–in–10 days, but rather percentiles of the expected distribution of measurements. This may be similar but not identical to the return frequency expressed as a percentile, depending on the number of measurements used to support the regression. EPA lacked the information necessary to determine whether FMC's contractor calibrated the model correctly. However, taking the conclusion at face value, the value FMC predicted using WARP, 0.3687 ppb, appears to represent the maximum of the estimated values of the annual 90th percentile among all the sites evaluated. Such a site would be expected to have higher concentrations than 0.3687 ppb about 37 days a year (10% of the year). Generally, the 90% prediction intervals tend to be about plus or minus an order of magnitude. Thus, roughly 5% of such sites could have about 37 days a year greater than about 3.7 ppb.

The Agency also disagrees that the differences between FMC and EPA estimates are only due to FMC's use of county-level usage data. Most importantly, the Agency does not concur that 1–in–10–day estimates are a reasonable surrogate the for the 1–in–

10–year peak concentrations estimates used routinely by EPA. 1–in–10–day concentrations are not the measurement endpoint EPA uses for human health risk assessment and are not appropriate for estimating drinking water exposure. The Agency uses 1–in–10–year peak concentrations for screening level assessments, and the full time series (typically 30 years) of daily concentration values for refined assessments. For example, EPA's estimate of the 1–in–10–year peak concentration from the simulation of corn in Kansas with a 300 ft buffer was 31.8 µg/L. EPA's estimate of the 1–in–10–day concentration from the same simulation was 4.5 µg/L. The measurement endpoint used by EPA, which has been subject to peer review by the FIFRA SAP, is the 1–in–10–year, peak concentration. A concentration that occurs 1–in–10 days occurs 350 times as often as a 1–in–10–year event. Assuming this statistic instead of the one EPA used would result in a significantly lower estimates of pesticide water concentration and human exposure. Such an approach would be inconsistent with the SAP's advice and EPA's typical practice, as well as with EPA's statutory requirement to protect human health. EPA disagrees with FMC's claim that ''the extreme nature of a 1–in–10–year event would result in dilution effects that cancel out any increased loading.'' The Index Reservoir scenario has been validated against monitoring collected at the site it was designed to represent, Shipman City Lake in Illinois (Ref. 56). This assessment showed that the 1–in–10–year event EPA modeled was similar in magnitude to the peak value of the pesticide concentrations shown in 5 years of monitoring data collected at that site. The 1–in–10–year peak concentration calculated for that pesticide (not carbofuran), using the Index Reservoir was 33 µg/L, while the peak value from 5 years of monitoring was 34 µg/L.

EPA cannot comment on the use intensities assumed for FMC's assessment. The source of county level use data was not described. Based on the comments submitted to the SAP by FMC (Ref. 33) the source is likely to be sales data at the distributor level. However, the method chosen to estimate county level use estimates from the sales data was not provided. The county level estimates used in the assessment for 2002 to 2004 for Illinois were provided in a table. These estimates for each county were averaged over the 3 years for input to the model. A summary description of how watershed-scale use estimated from county level use data was provided, but because the sales data and method that was used to generate county level estimates were not available, this validity of this assessment cannot be evaluated.

Several commenters criticize the Agency for the assumption that 100% of the cropped area in a watershed is treated. These commenters claim that actual carbofuran sales data on a county basis confirm that the actual carbofuran PCT is less that 5%, with most PCTs less than 1%. The commenters claim that these county level sales data either were provided to EPA as part of reports prepared by their consultants, or would be provided to EPA. They further claim that ''how these data were analyzed, interpreted, and applied'' was provided to EPA in a report on best management practices.

While the Agency typically uses PCT in developing estimates of pesticide residues in food, this is entirely different than developing estimates of the percent of a watershed that is treated for purposes of estimating drinking water exposures. Food is generally randomly distributed across the nation without regard to where it is grown. This tends to even out any PCT variations that may arise on local levels. By contrast, the source of water consumption (and consequently exposure) is localized, either in a private well or a community water system. The PCT in any watershed will therefore directly impact the residues to which people living in that watershed will be exposed.

For this reason, among others, for drinking water exposure estimation, the Agency assumes that 100% of the cropped area (or 100% PCT) is treated. EPA also makes this assumption due to the large uncertainties in the actual PCT on a watershed-by-watershed basis. EPA developed an extensive discussion of the uncertainties in PCT and how they impact drinking water exposure assessment in its proposed rule (73 FR 44834) and in a background document provided to the SAP considering the draft carbofuran NOIC (Ref. 59). Because usage is often not evenly distributed across the landscape, due to differences in factors like pest pressure, local consultant recommendations and weather, it may be much higher in some areas. Further, temporal uncertainties can result in changes in use that might be driven by weather, changes in insect resistance over time, and changes in agronomic practices. To date, methods that account for this uncertainty, given the nature of the available data, have not been developed. Consequently, EPA cannot accurately estimate a drinking-water watershed scale PCT that, when used in a quantitative risk assessment on a national or regional basis, standing alone, provides the necessary level of certainty to allow the Agency to confidently conclude that exposures will meet the FFDCA 408 safety standard.

In most cases, EPA agrees that it is unlikely that 100% of the crop will be treated in most watersheds, particularly in larger watersheds. However, for small watersheds, it is reasonable to assume that an extremely high percentage of the crops in the watershed may be treated.

Moreover, EPA has an obligation to evaluate all legally permitted use practices under the label, and to ensure that all such use meets the requisite statutory standards, not simply to base its decisions on the practices the majority might typically use. The September 2008 proposed label imposes no restriction on the application of carbofuran related to whether a particular percent of the watershed has been treated. Thus, even with the restrictions on FMC's September 2008 labels, it remains legally permissible for 100% of the watershed to be treated with carbofuran.

Nor is EPA aware of an enforceable mechanism to ensure that farmers applying pesticide to their individual fields will have the ability to determine whether a particular percentage of the watershed has been treated. There are significant practical difficulties inherent in implementing such label directions, as they force individual growers to have continual knowledge of the variances of the behavior of other farmers across the entire watershed. While for small watersheds that involve only one or two farms it might be feasible for neighbors to coordinate applications with respect to adjacent fields, for larger watersheds, the practical difficulties increase significantly.

However, in the proposed rule, EPA conducted a sensitivity analysis to explore the impact of PCT assumption on dietary risk using an assumed 10% PCT, a figure proposed previously by FMC (73 FR 48864). The results of that analysis demonstrated that even at these low percentages, which may significantly underestimate exposures, particularly in small watersheds, carbofuran exposures from drinking water contribute significantly to children's dietary risks. EPA conducted a similar sensitivity analysis for this final rule, discussed below in Unit VIII.E.3., which demonstrates that even assuming that a low percentage of a watershed is treated, exposures will be unsafe for infants.

FMC has submitted three assessments that relied in part on what they refer to as ''county-level usage data'' (Refs. 36, 96, and 120). The description that EPA has been able to piece together from the registrant's various submissions indicates that the original source of the ''county-level usage data'' is sales data, apparently collected at the distributor level. FMC claims to have augmented these sales data in an unspecified manner, by incorporating information from the distributor, which FMC used to allocate carbofuran usage at the county level. FMC has provided maps representing county level and watershed-scale use estimates, but has not provided the actual usage estimates in any clearly understandable format. Nor, as of the close of the comment period, has any commenter provided either the ''actual sales data'' FMC used to develop these estimates, or the methods used to estimate county level usage from the sales data. FMC has provided only a limited description of how these data were collected and no description of how they were actually analyzed or validated; what FMC characterizes as ''careful and proven techniques to capture this data'' were not described. The method FMC used to attribute carbofuran sales to counties was not described. In the absence of the data or analyses described above, EPA is unable to verify or evaluate the results of any analyses that rely on these data and can reach no conclusion on its validity or utility.

The Agency agrees that county-level use data would be useful in generating reasonable estimates of PCT that could be used in drinking water assessments. However, as discussed in the previous responses, FMC has only provided county-level use estimates (not the underlying data nor the analyses that presumably are the basis for the estimates) for Illinois; county-level estimates to support other risk assessments have not been submitted by FMC as of the end of the comment period. The underlying sales data (*i.e.*, measurements) used to make the county-level estimates and the methods FMC used to estimate county level use from them have also not been submitted. FMC has provided limited characterization of the source data, noting that these data were derived from FMC billings and ''EDI data'', which they did not define, and that the sales data had been adjusted to reflect different use patterns and by removing use for patterns which they no longer support (*e.g.*, alfalfa). However, FMC did not provide adequate details on the methodology they used to make these adjustments.

A major problem with the method FMC seemingly used is that it does not appear to account for uncertainties due to variation in time and space and the potential for use to be locally concentrated due to pest pressures. The method FMC summarily describes as having been used to allocate county-level usage estimates to watersheds appears to be similar to a method that has been used by others for calculating ''best-estimate'' county-level PCT (Ref. 95) to map nation-scale pesticide usage. However, these methods are not appropriate for calculating PCTs for surface drinking water sources or watersheds that drain to CWSs, because they do not adequately account for the uncertainty in the data at the appropriate spatial scale. This methodology produces an estimate that is a measure of central tendency and, as such, roughly half the estimated values will underestimate the PCT. Furthermore, because, pesticide use varies from year to year, and can in some cases be patchy, with high levels of use in small areas and little use in most areas, the underestimates of PCT can be substantial in small watersheds. As previously noted, methods for calculating PCT that account for these uncertainties have not been developed.

Several commenters allege that carbofuran use will not concentrate in areas due to pest pressure. One commenter criticizes EPA for failing to support its conclusion that the pest pressure and infestation patterns could result in concentrated usage that could occur within vulnerable watersheds, and claims that EPA ignored the county-level sales data provided by the registrant which can be used both to determine whether carbofuran usage is evenly dispersed or locally clustered (an assessment [FMC's contractor] expressly undertook) and the probability of concentrated usage within vulnerable watersheds.

Two commenters claim that, because ''more than 60% of the total corn acreage is made up of rootworm resistant GMO corn, which vary rarely requires treatment,'' and the remaining acreage ''is refugia acreage for GMO fields which is widely distributed geographically,'' it is a ''virtual impossibility'' that all corn acreage in a particular watershed will require a rescue treatment in any given year. Another commenter made similar allegations for sunflower acreage. The commenter claims that ''[s]unflowers are a specialty crop that is only grown on a small proportion of agricultural acreage generally, particularly in states where carbofuran is used (*i.e.*, Nebraska, Colorado, Kansas, and Texas).'' According to the commenter, the available data suggests that sunflowers are only used on 25% of total cropped area, and that carbofuran is not used on all of these acres. As further support for this point, another commenter cites to the sunflower PCAs they calculated for Nebraska, Kansas, Colorado, and Texas,'' which they claim is 2.12%.

The Agency agrees that the true PCT is not likely to be 100%. However, as discussed in several places throughout this preamble, the Agency is certain that PCT is higher in some cases than values calculated by the commenter. The degree of spatial correlation, however, is unknown, and thus is a major uncertainty. FMC's own analysis of carbofuran use in watersheds in Indiana suggests that carbofuran use is indeed localized, as carbofuran use was found in watersheds of only 12 of the 35 community water supplies that they considered in the state (Ref. 120). This suggests that when pest pressure occurs it is not unreasonable to assume it will be localized. Other factors, such as market pressures, consultant recommendations, or local availability may also be driving disparate levels of use in different locations. Since there is no method to account for this uncertainty in estimating PCT, it cannot be estimated in this assessment with the degree of confidence consistent with the statutory requirement of a reasonable certainty of no harm.

The commenters raise several valid points that, taken together, reduce the probability that carbofuran usage will be concentrated over large geographical areas. However, the commenters failed to rebut EPA's conclusion that carbofuran's use patterns could be concentrated in certain locations, such that a large percentage of a small watershed is treated. Their first observation that carbofuran is applied as a rescue treatment on 0.27% of all U.S. corn acreage is true at the national level. However, the commenters failed to note that there are regional differences in carbofuran use, and as the scale becomes smaller, one would expect these differences to become even greater, precisely because use of carbofuran is sporadic in both time and space. Large areas would not be treated, but smaller areas, such as some drinking water watersheds considered by EPA may have a significantly higher proportion of their acreage treated than compared to national estimates.

The commenters' point that control failures are more likely to occur on biotech corn refugia is valid and will tend to prevent treatment of large

contiguous areas of corn. However, not all farmers plant biotech corn. Further, farmers who do grow biotech corn do not locate their refugia universally in one part of the field, and there is no requirement that farmers in contiguous fields coordinate the location of their respective refugia. Consequently, the possibility that several contiguous corn fields could be simultaneously treated in any given year is not precluded. It is worth noting in this context that the September 2008 labels do not restrict application to the refugia. Moreover, in those areas where carbofuran is applied aerially, such as Nebraska, it is frequently easier for applicators to treat an entire field, rather than restricting their application to only select portions of the field. This is particularly true in smaller fields. Finally, because usage is often not evenly distributed across the landscape due to differences in factors like pest pressure, local consultant recommendations and weather, it may be much higher in some areas, and methods that account for this uncertainty, given the nature of the data, have not been developed.

EPA agrees that the 87% default PCA that has been used for EPA's drinking water exposure assessments is likely a conservative estimate of sunflower acreage in a watershed. However, EPA has not developed PCAs for specific crops other than for corn, wheat, and cotton, consistent with guidance provided by the FIFRA SAP (Ref. 38). Nevertheless, the sunflower growers' own estimate of sunflower PCAs range as high as 25%, which certainly cannot support a PCA of 2.12% as one of the commenters suggested.

One commenter complained that as part of the NMC CRA, EPA relied on actual ''county-or multi-county level pesticide use information, based on agricultural chemical use surveys'' to develop its estimates of potential exposure, rather than assuming 100% PCT.'' The commenter compares their surface water estimations to those developed by EPA for the NMC cumulative assessment, and claims that the two are consistent.

While it is true that in the NMC assessment, EPA used PCT numbers to estimate the cumulative exposure from the contamination of such pesticides in surface water, this was done in order to more accurately account for the likelihood of pesticide co-occurrence at a single drinking water facility. But this does not mean that use of PCT is appropriate in conducting an assessment of aggregate exposure from carbofuran residues in surface water. This difference in approach between the assessment of a single chemical's aggregate exposure, and the assessment of the cumulative exposures from several chemicals, stems from the differences in the purpose and scope of the two assessments. These differences inevitably require the application of different methodologies.

In evaluating the acute risks associated with a single chemical's contamination of drinking water, EPA must consider all of the variations permitted under the label. Drinking water exposures are driven by uniquely local factors; not only is the source of drinking water local (i.e. a person drinks water from his or her local water system not from a combination of water systems from across the United States), but the likelihood and degree of contamination of any particular, local drinking water source, whether it is a reservoir or well, varies widely based on local conditions (e.g, from local pest pressures, weather). Given this local variability, EPA must evaluate how all of the practices permitted under the label will affect drinking water exposures, because all are legally allowed, and farmers may choose any of them based on their particular individual local conditions. This means that even if typically growers, on a national or regional basis, do not frequently use a particular practice, EPA must still evaluate whether aggregate exposures from that practice would be safe because the practice is legally permissible and may be used due to local conditions. Thus, for example, even if most growers tend to apply the chemical only to a portion of the field, or typically only apply one-half of the maximum application rate, EPA must determine whether use by all or some growers to the entire field or at the maximum rate in a local watershed would result in unsafe drinking water concentrations.

By contrast, it is not feasible to conduct the identical analysis for a cumulative assessment of related chemicals. Since the potential combinations of variations in pesticide use practices for the group of pesticides to be assessed are essentially infinite, even with computer modeling it would be impossible to model or evaluate all of the combinations allowed under the labels. EPA therefore needed to narrow its evaluation of the possible combinations to those deemed ''likely'' to occur. In contrast to the single chemical assessment, a cumulative assessment is intended to develop a snapshot in time of what is likely occurring at the moment. Moreover, the purpose of a cumulative assessment is to identify major sources of risk that could potentially accrue due to the concurrent use of several pesticides that act through a common mechanism of toxicity. Thus, EPA is primarily interested in the subset of circumstances in which residues from such pesticides occur concurrently (or co-occur).

In addition, one of the important attributes of a cumulative risk assessment is that its scope and complexity can potentially lead to inflated estimates of risk due to compounding conservatisms, which would reduce the interpretability and ultimately the utility of the assessments. Because many data sets need to be combined, reducing the impact and likelihood of compounding conservative assumptions and over-estimation bias becomes very important in constructing a reasonable cumulative risk assessment.

When little or no information is available to inform potential sources of exposure, such as a reasonable or maximum watershed scale PCT, it is both scientifically and legally reasonable for a single chemical assessment to incorporate conservative assumptions to reflect reasonable worst-case exposure estimates. But in a cumulative risk assessment, the incorporation of such conservative assumptions would imply multiple simultaneous reasonable worst-case exposure estimates for each individual chemical. This is so unlikely that the results would no longer represent even a reasonable worst-case estimate of the likely risks. Consequently, some of the conservative assumptions appropriately used in the single chemical risk assessments are not appropriate or reasonable for use in a cumulative risk assessment, and vice versa.

As a result, EPA chose in the NMC to work with those data that most closely reflect ''representative'' exposures, and developed ''representative'' estimates of PCT in regional watersheds. However, to be clear, the PCT values used in the NMC assessment do not represent estimates of 50% of watersheds, or even the ''average'' watershed; rather, they represent values that are expected to be as likely to be accurate as not, based on a random selection of watersheds. A comparable example is the statistic that the average American family has approximately 2 children; this may or may not be true for any individual family, but there is an equally good chance that it will be accurate for any randomly selected family, as that it will not be accurate. For the cumulative assessment, EPA is able accept this level of uncertainty in these estimates, precisely because it has confidence that aggregate exposures from the individual chemicals will be safe, based on the level of conservatism in the single

chemical assessments. But given the statute's mandate to ensure a ''reasonable *certainty* of *no harm*,'' EPA could not rely on the approach used under the cumulative assessment in the absence of the more conservative single-chemical assessment that evaluates the full range of exposures permitted by the registration.

Nevertheless, as discussed in Unit VIII.E.3., in response to FMC's concerns EPA performed a sensitivity analysis of an exposure assessment using a PCT in the watershed to determine the extent to which some consideration of this factor could meaningfully affect the outcome of the risk assessment. The results suggest that, even at levels below 10% CT, exposures from drinking water derived from surface waters can contribute significantly to the aggregate dietary risks, particularly for infants and children. Accordingly, these assessments suggest that use of a reasonably conservative PCT estimate, even if one could be developed, would not meaningfully affect the carbofuran risk assessment, as aggregate exposures would still exceed 100% of the aPAD.

One commenter raised the concern that USGS monitoring found that concentrations of carbofuran in agricultural streams ranged from non-detect to 7 ppb (with a 95th percentile concentration of 0.044 ppb), noting that the monitoring strategy used by USGS for this program is likely to underestimate peak contamination levels (Ref. 114). The commenter argued that the USGS monitoring program is not designed to target waterways where carbofuran is in high use, or timed to coincide with predicted peak levels of pesticide runoff into waterways. Moreover, the frequency of sampling is normally weekly or bi-weekly, not enough to reliably sample the sporadic peaks that are predicted to be associated with pesticide application days or heavy runoff following rains. This monitoring strategy is more likely to capture the trends in chronic pollutants, but miss peak events such as pesticide runoff following rain. The sampling strategy biases towards the null; that is, it is likely to underestimate contamination by missing peak events when they occur, but will not over-represent non-detects. The commenter alleged that the fact that these data show routine detections of carbofuran in streams from agricultural land use areas suggests that there are likely to be peak events that go undetected. These data further support EPA's decision to cancel carbofuran and support rejecting FMC's proposal to restrict its use only in a limited number of watersheds. Because carbofuran is detected in streams across the nation, FMC's spatially limited mitigation plan would fail to protect many waterways from contamination.

One commenter argued that FMC's proposal to restrict uses of carbofuran in the most vulnerable watersheds, to limit ground water contamination, would fail to provide adequate protection. The commenter noted ''substantial monitoring data showing that carbofuran has been detected by the USGS in 10.4% of over 2,000 stream-water samples taken from 83 agricultural streams monitored from 1992–2001, demonstrating that it is a widespread water pollutant and that geographically limited mitigation measures are not likely to be adequately protective.'' (Ref. 114).

EPA agrees with the commenters that the risks of surface water contamination from carbofuran are significant, and that FMC's September 2008 labels do not mitigate the risks sufficiently.

3. *Aggregate exposures*. One group of commenters presented a summary of some of the results of their own aggregate exposure assessment. According to these commenters, the results of their risk assessment demonstrate that carbofuran residues from the four domestic food uses, imports, and drinking water are ''safe.''

EPA notes that the commenters merely provided summaries of the results of this assessment, and describe their methodology in only the most general terms, but chose not to provide the actual risk assessment to the Agency. Nor did the commenters provide any of their input files. Consequently, EPA was unable to fully evaluate the scientific adequacy of this assessment.

The Agency's analyses result in food only exposures comparable to some of those reported by the commenters (*e.g.*, exposures from the four import tolerances). But the remaining scenarios could not be verified since the commenters did not elaborate on the methods by which the detected concentrations found in the PDP milk samples were adjusted. Nor could EPA replicate the commenters' reported results. As discussed in more detail in Unit VIII.E.1., the Agency's assessment for this subset of foods differs slightly from the commenters due to PCT estimates (bananas), and more significantly, in the treatment of milk residues detected by the PDP program. Those differences cause the commenters' food only scenario (without accounting for any reversibility of AChE inhibition) to be slightly lower than the Agency's revised estimates (67% vs 78%).

EPA was also unable to replicate the commenters' results for drinking water exposures, or for aggregated exposures from food and drinking water. The commenters report that in their water only scenario, the DEEM results were 350% aPAD, assuming a 5% crop treated value. However, as discussed previously VII.C.2.b., EPA believes that it lacks sufficient basis to assume that only 5% of the crop in a watershed will be treated.

The commenters presented the results of their ''Eating Occasions Analyses'' for only one aggregate scenario, which was based on a Kansas corn drinking water scenario, and only for the infant subpopulation. It is based on this scenario that the commenters claim that aggregate exposure to carbofuran residues will be safe. The commenters appear to have also developed some other scenarios for corn, sunflowers, and potatoes that produce similar predicted drinking water concentrations; some of which have slightly higher peak concentrations. However, they did not present any results for those scenarios, nor provide any of the analyses to the Agency as part of their comments. As noted, EPA was unable to replicate these results. But as discussed below in Unit VIII.E., EPA disagrees that aggregate exposures to carbofuran residues are safe.

One commenter raised the concern about the numbers of people exposed to unsafe levels of carbofuran. The commenter stated that EPA has determined that the aggregate exposures to carbofuran from food and water at doses greater than 0.000075 mg/kg/day/day, the aPAD, will not meet the safety standard of FFDCA section 408(b)(2). At the 99.9th percentile of exposure, aggregate dietary exposure from food alone exceeds the aPAD by 160% for children 6–12 years (approximately 36,000 kids), and 210% for children 3–5 years old. The commenter stated that when these estimates are aggregated with ground water sources of drinking water from vulnerable areas, the predicted exposure exceeds the aPAD by 1,100% for adults over 50 years (approximately 71,000 people) and over 10,000% for infants at the 99.9th percentile (approximately 4,000 infants). According to the commenter there are approximately 24,000,000 children under 5 years old in the United States, so 0.1% of this age group would mean leaving approximately 24,000 children at risk, using the 99.9th percentile exposure estimates. According to the commenter, no reading of the statute will support any approach that allows thousands of children to be

exposed to a pesticide at levels that exceed the aPAD.

EPA agrees that aggregate exposures to carbofuran do not meet the FFDCA's safety standard. The precise figures calculated by the commenter were based on exposures from all of the registered uses assessed in EPA's proposed rule; as many of those uses have been canceled, the number of affected children is expected to be lower. However, EPA agrees that based on its revised estimates, allowing children to continue to be exposed to carbofuran would not be consistent with the statute.

D. Comments Relating to Legal or Policy Issues

A number of commenters raised concern that EPA had proposed to revoke all carbofuran tolerances before taking action against the pesticide registrations under FIFRA ''in the absence of an imminent health hazard.'' Several of these commenters raised concern that EPA had failed to comply with FFDCA section 408(l)'s requirement to ''coordinate action [under the FFDCA] with any related necessary action under the [FIFRA].

EPA has determined with respect to carbofuran both that the tolerances established for that chemical fail to meet the safety standard set forth in section 408 of the FFDCA and must therefore be revoked under that statute, and that the pesticide registrations fail to meet the relevant standard under FIFRA, and must therefore be canceled under that statute. Section 408(l)(1) of the FFDCA provides that ''[t]o the extent practicable and consistent with the review deadlines in subsection (q), in issuing a final rule that suspends or revokes a tolerance or exemption for a pesticide chemical residue in or on food, the Administrator shall coordinate such action with any related necessary action under [FIFRA].'' 21 U.S.C. 346a(l)(1). Nothing in this provision establishes a predetermined order for how the Agency is to proceed to resolve dietary risks. Nor does FIFRA include any provision that imposes a requirement that the Agency act first under FIFRA before it may act under the FFDCA in a situation such as carbofuran, where pesticide registrations and tolerances fail to meet the relevant legal standards of FIFRA and the FFDCA. Accordingly, there is no support for the notion that, as a matter of law, the Agency lacks the legal authority to revoke pesticide tolerances under the FFDCA that do not meet the safety standard of that statute unless the Agency has first canceled associated pesticide registrations under FIFRA.

Coordination is defined as ''to place or arrange in proper order or position, to combine in harmonious relation or action.'' Thus, the requirement to ''coordinate'' is a direction to ensure that the substance of actions taken under the two statutes are consistent, and that the Agency make a determination as to the proper order of action under the two statutes. This cannot be read as a requirement that actions under FIFRA precede actions under the FFDCA, or that any particular order is necessarily required. Indeed, to the extent that this provision offers any direction with respect to the order of preference, the language actually suggests that the order in which EPA has proceeded is entirely appropriate. Section 408(l)(1) requires EPA to proceed ''consistent with the review deadlines in subsection (q).'' 21 U.S.C. 346a(l)(1).

One commenter raised concern that the FFDCA requires EPA to harmonize actions under FFDCA and FIFRA ''to the extent practicable.'' The commenter alleges that there is no excuse for not ''harmonizing action under both statutes'' in the absence of an ''imminent hazard.'' According to the commenter, ''harmonization would allow the key science issues to be resolved in an orderly manner before hasty action is taken, would avoid needless disruption and confusion of agriculture and the channels of trade, and would allow the benefits of the pesticide to be properly taken into account.''

As explained in the previous response, the comment is based on a misconstruction of FFDCA section 408(l)(1). As a preliminary matter, EPA interprets the commenter's phrase ''harmonizing action under both statutes'' to mean either: (1) Pursuing action to cancel registrations under FIFRA prior to revoking tolerances or (2) holding a hearing pursuant to FIFRA and the FFDCA simultaneously. Section 408(l)(1) does not require EPA to do this; as discussed previously EPA is merely required to ''coordinate'' action under the two statutes, ''to the extent practicable and consistent with the review deadlines.'' Nor is there any basis in either FIFRA or the FFDCA for the commenter's alleged requirement that EPA determine that a pesticide presents an ''imminent hazard,'' as that term is defined in FIFRA, prior to taking action to resolve dietary risks under the FFDCA.

EPA chose to initially take action exclusively under the FFDCA to resolve carbofuran's dietary risks for a number of reasons. First and foremost, this was determined to be the quickest way to resolve acute dietary risks to children. In addition, the fact that this would resolve the issues most quickly would be beneficial to all parties, including the registrant and growers, since it would reduce costs and uncertainty for all by resolving the question of carbofuran's dietary risks.

An additional consideration was the belief that this route would be more transparent, and would ensure that there would be no confusion as to the appropriate standard that would be used to resolve dietary risk concerns. The Agency was concerned that holding a hearing under FIFRA would lead growers to misunderstand the role that benefits could play in the ultimate decision. Indeed, the commenter's claim that ''harmonization would allow the benefits of the pesticide to be properly taken into account'' confirms that EPA's concern was justified.

Whether under FIFRA or the FFDCA, a pesticide's benefits are irrelevant in determining whether a pesticide presents an unacceptable dietary risk. Section 408(b)(2) clearly provides that the only standard is whether the pesticide chemical residues will be ''safe.'' 21 U.S.C. 346a (b)(2). Nor is the evaluation of a pesticide's ''benefits'' included among the factors to be considered in determining whether residues will be ''safe.'' 21 U.S.C. 346a (b)(2)(B). FIFRA section 2(bb) incorporates the FFDCA's standard explicitly and without modification, clearly distinct from the provisions that relate to consideration of the benefits of the pesticide. Thus, in any FIFRA hearing, if it is determined that use of a pesticide fails to meet the FFDCA section 408 safety standard, the pesticide must be canceled, irrespective of whether the benefits outweigh the ecological and occupational risks. But since under FIFRA, all issues are addressed in one hearing, the potential existed for confusion on the part of the members of the public, who might have an interest in the proceedings.

Finally, EPA disagrees that it has failed to proceed in an orderly manner or that it has taken hasty action. By the time these tolerance revocations will be effective, EPA will have provided numerous opportunities for public comment, obtained peer review of the key science issues from the SAP, and will, if appropriate, hold a hearing on remaining issues of material fact. Further, notwithstanding the statutory deadlines in section 408(q) for identifying and resolving dietary risks, the registrant had 8 additional months to generate data to rebut the Agency's conclusions in the IRED. In total, the registrant and the public will have been

granted numerous opportunities and well over 2 years to comment on the key science issues. Given that carbofuran presents acute dietary risks to children, and the clear statutory deadline in FFDCA section 408(q), EPA believes it would be difficult to characterize its action as ''hasty.''

Some commenters objected to EPA's revocation of tolerances on the grounds that it was poor public policy because the action ''sets up farmers and food producers for unanticipated, unwarranted, and unfair enforcement action and penalties for presence of residues in food from otherwise legally treated crops.''

EPA shares the concerns that farmers' crops not be subject to unfair or unwarranted penalties based on the Agency's choice to resolve carbofuran's dietary risks before proceeding with a cancellation. EPA has taken a number of measures in response to these concerns, to ensure that growers will not be unfairly penalized by the Agency's action.

First, EPA has established delayed effective dates for all of the tolerance revocations, to provide growers with sufficient time to use up stocks of carbofuran that they currently have on hand. These dates are well after the end of the current growing season. These delayed effective dates also ensure that growers have sufficient notice of when these requirements will be applicable to allow them to factor this into their purchasing and application decisions. By the time the rule is scheduled to become effective, growers will have been informed of EPA's intentions well over a year in advance; this should be more than sufficient time to allow growers to plan around the final revocation dates. Finally, EPA has initiated discussions with FDA, and will continue to coordinate with FDA, to ensure that food that was treated before the effective date of the tolerance revocations will continue to be allowed to be sold.

Late comments. EPA received a number of submissions after the close of the comment period. The majority of these were from FMC, the registrant of carbofuran. These submissions included a request to stay the effective date of the tolerance revocation, as well as requests that EPA consider additional issues and factual information in this final rule. In addition, one timely submitted comment questioned the legal basis for the statement in the proposed rule that failure to raise issues during the comment period would constitute a waiver of those issues, asserting that ''EPA's requirement. . .does not appear to be legally binding.''

Sections 408(e)–(g) of the FFDCA provides a multi-step process for the establishment and revocation of tolerances, that provides ample opportunities for those with an interest in the tolerance to protect those interests. The process essentially consists of informal rulemaking, supplemented as appropriate with an administrative hearing. *See,* 21 U.S.C. 321a(e)–(g). As an informal rulemaking, the process is governed by section 553 of the Administrative Procedures Act, (APA) except to the extent section 408 provides otherwise, or to the extent the FFDCA falls within one of the APA's exceptions. Accordingly, the legal basis for the Agency's statement that issues not raised during the comment period on the proposed tolerance revocation may not be raised as objections or in any future proceeding, stems directly from the requirements of section 553 of the APA, and the case law interpreting these requirements. In this regard, it is well established that the failure to raise factual or legal issues during the comment period of a rulemaking, constitutes waiver of the issues in futher proceedings, [*e.g.*, *Forest Guardians v US Forest Service*, 495 F.3d 1162, 1170–1172 (10th Cir. 2007)] (Claim held waived where comments ''failed to present its claims in sufficient detail to allow the agency to rectify the alleged violation''); *Nuclear Energy Institute v EPA*, 373 F.3d 1251, 1290–1291 (D.C. Cir. 2004) (''To preserve a legal or factual argument, we require its proponent to have given the agency a 'fair opportunity' to entertain it in the administrative forum before raising it in the judicial forum.'') *Native Ecosystems Council v Dombeck*, 304 F.3d 886, 889-900 (9th Cir. 2002) (Purpose of requirement that issues not presented at administrative level are deemed waived is to avoid premature claims and ensure that agency be given a chance to bring its expertise to bear to resolve a claim); *Kleissler v. U.S. Forest Service*, 183 F.3d 196, 202 (3d Cir. 1999) (Policy underlying exhaustion requirement is that ''objections and issues should first be reviewed by those with expertise in the contested subject area''); *National Association of Manufacturers v US DOI*, 134 F.3d 1095, 1111 (D.C. Cir. 1998) (''We decline to find that scattered references to the services concept in a voluminous record addressing myriad complex technical and policy matters suffices to provide an agency like DOI with a 'fair opportunity' to pass on the issue.'') *Linemaster Switch Corporation v EPA*, 938 F.2d 1299, (D.C.Cir. 1991) (declining to consider in challenge to final rule, data alluded to in comments, but not submitted during the comment period, and information submitted to EPA office that was not developing the rule). And nothing in the language or structure of the FFDCA alters this. As such, this is indisputably a binding legal requirement.

The fact that section 408 of the FFDCA in certain limited circumstances supplements the informal rulemaking with a hearing, does not change the fundamental nature of the process. In other words, the addition of further process, through the availability of an administrative hearing to resolve certain factual disputes, does not fundamentally alter the requirements applicable to informal rulemakings. To this end, EPA interprets the notice and comment rulemaking portion of the process as inextricably linked to the administrative hearing. The point of the rulemaking is to resolve the issues that can be resolved, and to identify and narrow any remaining issues for adjudication. Accordingly the administrative hearing does not represent an unlimited opportunity to supplement the record, particularly with information that was available during the comment period, but that commenters have chosen to withhold. To read the statute otherwise would be to render the rulemaking portion of the process entirely duplicative of the hearing, and thus, ultimately meaningless. *See, e.g.*, *FDA v. Brown & Williamson Tobacco*, 529 U.S. 120, 132–133 (2000) (Court must interpret statute as a symmetrical and coherent regulatory scheme, and fit, if possible, all parts into an harmonious whole.) *APW, AFL-CIO v Potter*, 343 F.3d 619, 626 (2nd Cir. 2003) (''A basic tenet of statutory construction. . .[is] that a text should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant, and so that one section will not destroy another...''), quoting, *Silverman v Eastrich Mulitple Investor Fund*, 51 F.3d 28, 31 (3rd Cir. 1995). The equities of this construction are particularly strong, where, as here, the information was (or should have been) available during the comment period. *See, Kleissler*, 183 F.3d at 202 (''[A]dministrative proceedings should not be a game or a forum to engage in unjustified obstructionism by making cryptic and obscure reference to matters that ''ought to be'' considered and then, after failing to do more to bring the matter to the agency's attention, seeking to have that agency determination vacated'') *citing Vermont Yankee Nuclear Power Corp. v. N RDC*, 435 U.S. 519, 553–54 (1978).

Accordingly, in this final rule, EPA has not considered any of the information submitted after the close of the comment period.

VIII. Aggregate Risk Assessment and Conclusions Regarding Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA's assessment of exposures and risks associated with carbofuran use follows:

A. Toxicological Profile

Carbofuran is an NMC pesticide. Like other pesticides in this class, the primary toxic effect seen following carbofuran exposure is neurotoxicity resulting from inhibition of the enzyme AChE. AChE breaks down acetylcholine (ACh), a compound that assists in transmitting signals through the nervous system. Carbofuran inhibits the AChE activity in the body. When AChE is inhibited at nerve endings, the inhibition prevents the ACh from being degraded and results in prolonged stimulation of nerves and muscles. Physical signs and symptoms of carbofuran poisoning include headache, nausea, dizziness, blurred vision, excessive perspiration, salivation, lacrimation (tearing), vomiting, diarrhea, aching muscles, and a general feeling of severe malaise. Uncontrollable muscle twitching and bradycardia (abnormally slow heart rate) can occur. Severe poisoning can lead to convulsions, coma, pulmonary edema, muscle paralysis, and death by asphyxiation. Carbofuran poisoning also may cause various psychological, neurological and cognitive effects, including confusion, anxiety, depression, irritability, mood swings, difficulty concentrating, short-term memory loss, persistent fatigue, and blurred vision (Refs. 19 and 20).

The most sensitive and appropriate effect associated with the use of carbofuran is its toxicity following acute exposure. Acute exposure is defined as an exposure of short duration, usually characterized as lasting no longer than a day. EPA classifies carbofuran as Toxicity Category I, the most toxic category, based on its potency by the oral and inhalation exposure routes. The lethal potencies of chemicals are usually described in terms of the ''dose'' given orally or the ''concentration'' in air that is estimated to cause the death of 50 percent of the animals exposed (abbreviated as LD_{50} or LC_{50}). Carbofuran has an oral LD_{50} of 7.8-6.0 mg/kg, and an inhalation LC_{50} of 0.08 mg/l (Refs. 16 and 20). The lethal dose and lethal concentration levels for the oral and inhalation routes fall well below the limits for the Toxicity Category I, ≤ 50 mg/kg and ≤ 0.2 mg/l, respectively (40 CFR 156.62).

Carbofuran has a steep dose-response curve. In other words, a marginal increase in administered doses of carbofuran can result in a significant change in the toxic effect. For example, carbofuran data in juvenile rats (PND11 and 17) demonstrate that small differences in carbofuran doses (0.1 mg/kg to 0.3 mg/kg) can change the measured effect from significant brain and RBC AChE inhibition without clinical signs (0.1 mg/kg) to significant AChE inhibition, and resultant tremors, and decreased motor activity (0.3 mg/kg) (Refs. 45 and 83). In other words there is a slight difference in exposure levels that produce no noticeable outward effects and the level that causes adverse effects. This means that small differences in human exposure levels can have significant adverse consequences for large numbers of individuals.

B. Deriving Carbofuran's Point of Departure

There are laboratory data on carbofuran for ChE activity in plasma, RBC, and brain from studies in multiple laboratory animals (rat, mouse, and dog). These studies have been submitted to EPA as part of pesticide registration and include a variety of durations of exposure and types of toxic effects (neurotoxicity, developmental toxicity, cancer, etc). Consistent with its mode of action, data on AChE inhibition provide the most sensitive effects for purposes of deriving a RfD or PAD.

EPA uses a weight-of-evidence approach to determine the toxic effect that will serve as the appropriate PoD for a risk assessment for AChE inhibiting pesticides, such as carbofuran (Ref. 102). Neurotoxicity resulting from carbofuran exposures can occur in both the central (brain) and PNS. In its weight-of-the-evidence analysis, EPA reviews data, such as AChE inhibition data from the brain, peripheral tissues and blood (*e.g.*, RBC or plasma), in addition to data on clinical signs and other functional effects related to AChE inhibition. Based on these data, EPA selects the most appropriate effect on which to regulate; such effects can include clinical signs of AChE inhibition, central or peripheral nervous tissue measurements of AChE inhibition or RBC AChE measures (Id). Due to the rapid nature of NMC pesticide toxicity, measures of AChE inhibition in the PNS are very rare for NMC pesticides. Although RBC AChE inhibition is not adverse in itself, it is a surrogate for inhibition in peripheral tissues when peripheral data are not available. As such, RBC AChE inhibition provides an indirect indication of adverse effects on the nervous system (Id). EPA and other state and national agencies such as California, Washington, Canada, the European Union, as well as the World Health Organization (WHO), across the world use blood measures in human health risk assessment and/or worker safety monitoring programs as surrogates for peripheral AChE inhibition.

AChE inhibition in brain and the PNS is the initial adverse biological event which results from exposure to carbofuran, and with sufficient levels of inhibition leads to other effects such as tremors, dizziness, as well as gastrointestinal and cardiovascular effects, including bradycardia (Ref. 20). Thus, AChE inhibition provides the most appropriate effect to use in risk extrapolation for derivation of RfDs and PADs. Protecting against AChE inhibition ensures that the other adverse effects associated with cholinergic toxicity, mentioned above, do not occur.

There are three studies available which compare the effects of carbofuran on PND11 rats with those in young adult rats (herein called comparative AChE studies) (Refs. 3, 4, 5, and 83). Two of these studies were submitted by FMC, the registrant, and one was performed by EPA-ORD. An additional study conducted by EPA-ORD involved PND17 rats (Ref. 79). Although it is not possible to directly correlate ages of juvenile rats to humans, PND11 rats are believed to be close in development to newborn humans. PND17 rats are believed to be closer developmentally to human toddlers (Refs. 12, 26, and 27). Other studies in adult rats used in the Agency's analysis included additional data from EPA-ORD (Refs. 69, 78, and 83).

The studies in juvenile rats show a consistent pattern that juvenile rats are more sensitive than adult rats to the effects of carbofuran. These effects include inhibition in AChE in addition to incidence of clinical signs of neurotoxicity such as tremors. This pattern has also been observed for other NMC pesticides, which exhibit the same mechanism of toxicity as carbofuran (Ref. 107). It is not unusual for juvenile rats, or indeed, for infants or young children, to be more sensitive to chemical exposures as metabolic detoxification processes in the young are still developing. Because juvenile rats, called 'pups' herein, are more sensitive than adult rats, data from pups provide the most relevant information

for evaluating risk to infants and young children and are thus used to derive the PoD. In addition, typically (and this is the case for carbofuran) young children (ages 0–5 years) tend to be the most exposed age groups because they tend to eat larger amounts of food per their body weight than do teenagers or adults. As such, the focus of EPA's analysis of carbofuran's dietary risk from residues in food and water is on young children (ages 0 to 5 years). Since these age groups experience the highest levels of dietary risk, protecting these groups against the effects of carbofuran will, in turn, also protect other age groups.

EPA evaluated the quality of the AChE data in all the available studies. In this review, particular attention was paid to the methods used to assay AChE inhibition in the laboratory conducting the study. Because of the nature of carbofuran inhibition of AChE, care must be taken in the laboratory such that experimental conditions do not promote enzyme reactivation (*i.e.*, recovery) while samples of blood and brain are being processed and analyzed. If this reactivation occurs during the assay, the results of the experiment will underestimate the toxic potential of carbofuran (Refs. 50, 55, 76, 119, and 123). Through its review of available studies, the Agency identified problems and irregularities with the RBC AChE data from both FMC supported comparative ChE studies. These problems are described in detail in the Agency's study review (Refs. 24 and 25). As such, the Agency determined that the RBC AChE inhibition data from the two FMC comparative ChE studies were unreliable and not useable in extrapolating human health risk. In addition, RBC data from a study performed at EPA ORD did not provide doses low enough to adequately characterize the full dose-response in PND11 rats. In the recent SAP review of the draft carbofuran NOIC, the Panel unanimously agreed with the Agency's conclusion, remarking that ''[t]he Agency is well-justified in taking the position that the data on AChE inhibition in rat RBC, particularly with regard to the PND11 pups, are not acceptable for the purpose of predicting health risk from carbofuran'' (Ref. 44). By contrast, the brain AChE data from the FMC and EPA-ORD studies are acceptable and have been used in the Agency's dose-response analysis.

EPA has relied on a BMD approach for deriving the PoD from the available rat toxicity studies. A BMD is a point estimate along a dose-response curve that corresponds to a specific response level. For example, a BMD_{10} represents a 10% change from the background; 10% is often used as a typical value for the response of concern (Ref. 100). Generically, the direction of change from background can be an increase or a decrease depending on the biological parameter and the chemical of interest. In the case of carbofuran, inhibition of AChE is the toxic effect of concern. Following exposure to carbofuran, the normal biological activity of the AChE enzyme is decreased (*i.e.*, the enzyme is inhibited). Thus, when evaluating BMDs for carbofuran, the Agency is interested in a decrease in AChE activity compared to normal activity levels, which are also termed ''background'' levels. Measurements of ''background'' AChE activity levels are usually obtained from animals in experimental studies that are not treated with the pesticide of interest (*i.e.*, ''negative control'' animals).

In addition to the BMD, a confidence limit was also calculated. Confidence limits express the uncertainty in a BMD that may be due to sampling and/or experimental error. The lower confidence limit on the dose used as the BMD is termed the BMDL, which the Agency uses as the PoD. Use of the BMDL for deriving the PoD rewards better experimental design and procedures that provide more precise estimates of the BMD, resulting in tighter confidence intervals. Use of the BMDL also helps ensure with high confidence (*e.g.*, 95% confidence) that the selected percentage of AChE inhibition is not exceeded. From the PoD, EPA calculates the RfD and aPAD.

Numerous scientific peer review panels over the last decade have supported the Agency's application of the BMD approach as a scientifically supportable method for deriving PoDs in human health risk assessment, and as an improvement over the historically applied approach of using no-observed-adverse-effect levels (NOAELs) or lowest-observed-adverse-effect-levels (LOAELs). The NOAEL/LOAEL approach does not account for the variability and uncertainty in the experimental results, which are due to characteristics of the study design, such as dose selection, dose spacing, and sample size. With the BMD approach, all the dose response data are used to derive a PoD. Moreover, the response level used for setting regulatory limits can vary based on the chemical and/or type of toxic effect (Refs. 40, 42, 43, and 100). Specific to carbofuran and other NMCs, the FIFRA SAP has reviewed and supported the statistical methods used by the Agency to derive BMDs and BMDLs on two occasions, February 2005 and August 2005 (Refs. 42 and 43). Recently, in reviewing EPA's draft NOIC, the SAP again unanimously concluded that the Agency's approach in using a benchmark dose to derive the PoD from carbofuran brain AChE data in juvenile rats is ''state of the art science and the Panel strongly encouraged the Agency to follow this approach for all studies where possible'' (Ref. 44).

In EPA's BMD dose analysis to derive PoDs for carbofuran, the Agency used a response level of 10% brain AChE inhibition and thus calculated BMD_{10}s and $BMDL_{10}$s based on the available carbofuran brain data. These values (the central estimate and lower confidence bound, respectively) represent the estimated dose where AChE is inhibited by 10% compared to untreated animals. In the last few years EPA has used this 10% value to regulate AChE inhibiting pesticides, including OPs and NMCs including carbofuran. For a variety of toxicological and statistical reasons, EPA chose 10% brain AChE inhibition as the response level for use in BMD and BMDL calculations. EPA analyses have demonstrated that 10% is a level that can be reliably measured in the majority of rat toxicity studies; is generally at or near the limit of sensitivity for discerning a statistically significant decrease in AChE activity across the brain compartment; and is a response level close to the background AChE level (Ref. 107)

The Agency used a meta-analysis to calculate the BMD_{10} and $BMDL_{10}$ for pups and adults; this analysis includes brain data from studies where either adult or juvenile rats or both were exposed to a single oral dose of carbofuran. The Agency used a dose-time-response exponential model where benchmark dose and half-life to recovery can be estimated together. This model and the statistical approach to deriving the BMD_{10}s, $BMDL_{10}$s, and half-life to recovery have been reviewed and supported by the FIFRA SAP (Refs. 42, 43, and 44). The meta-analysis approach offers the advantage over using single studies by combining information across multiple studies and thus provides a robust PoD.

Using quality brain AChE data from the three studies (two FMC, one EPA-ORD) conducted with PND11 rats, in combination, provides data to describe both low and high doses. By combining the three studies in PND11 animals together in a meta-analysis, the entire dose-response range is covered. The Agency believes the BMD analysis for the PND11 brain AChE data is the most robust analysis for purposes of PoD selection.

The results of the BMD analysis for PND11 pup brain AChE data provide a BMD_{10} of 0.04 mg/kg/day and $BMDL_{10}$

of 0.03 mg/kg/day—this $BMDL_{10}$ of 0.03 mg/kg/day provides the PoD (Ref. 89).

Some commenters provided extensive critique with regard to the BMD modeling conducted by the Agency. However, ultimately, the $BMDL_{10}$ recommended by the commenters differs from the EPA's $BMDL_{10}$ by only 6% (0.031 mg/kg/day vs. 0.033 mg/kg/day) — a difference that is not biologically significant. Moreover, when rounded to one significant digit, both approaches yield the identical PoD of 0.03 mg/kg/day. Thus, although the commenters are critical of the Agency's approach, there is basic consensus that the PoD is approximately 0.03 mg/kg/day.

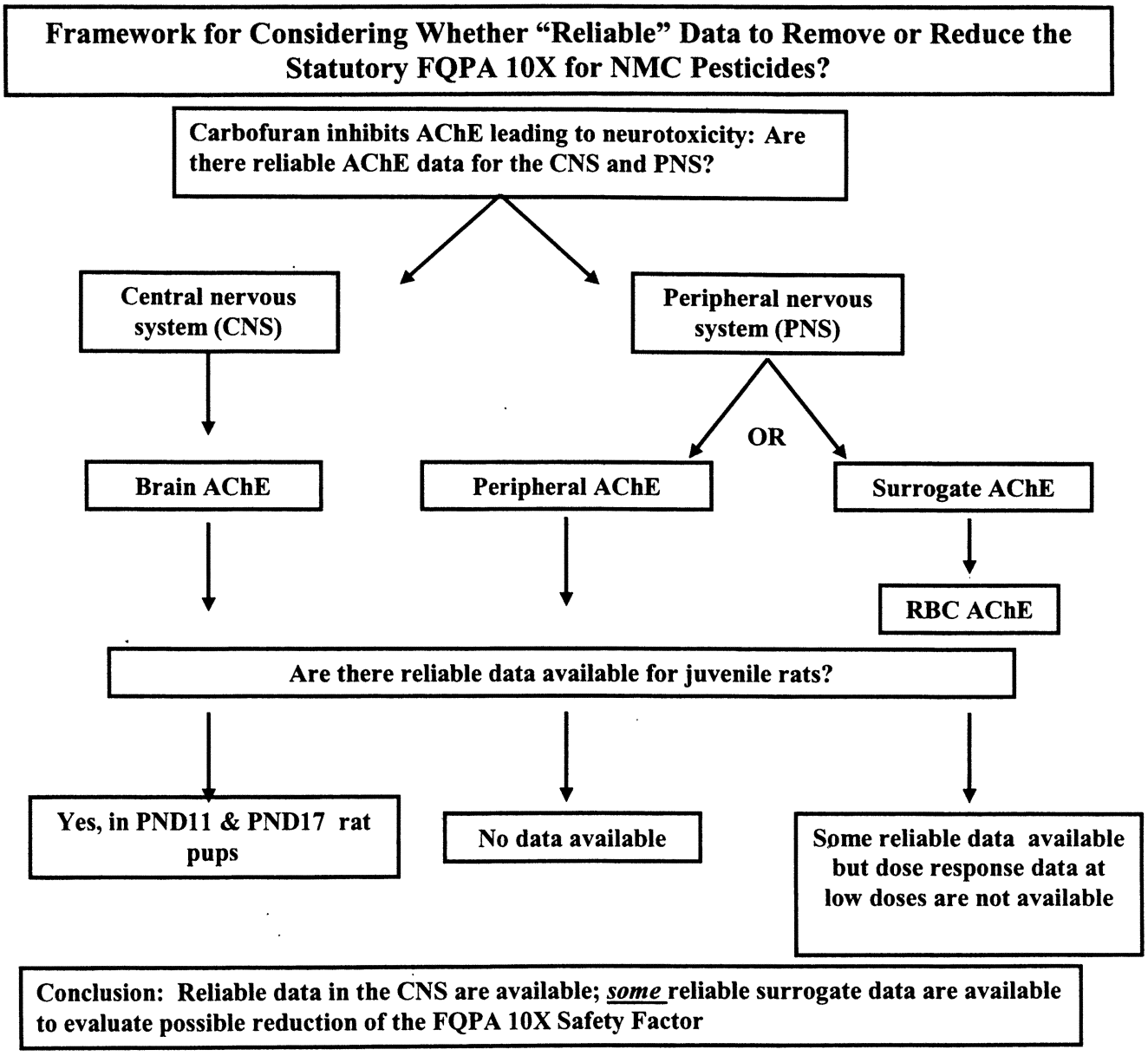
As noted, although EPA does not consider RBC AChE inhibition as an adverse effect in its own right, in the absence of data from peripheral tissues, RBC AChE inhibition data are a critical component to determining that a selected PoD will be sufficiently protective of PNS effects. Because of the problems discussed previously with the available RBC AChE inhibition data, there remains uncertainty surrounding the dose-response relationship for RBC AChE inhibition in pups, which the EPA-ORD data clearly show to be a more sensitive endpoint than brain AChE inhibition. Consequently, EPA cannot reliably estimate the BMD_{10} and $BMDL_{10}$ for RBC AChE data in pups. Furthermore, given that the EPA-ORD data clearly show pup RBC AChE to be more sensitive than pup brain AChE, EPA cannot conclude that reliance on the pup brain data as the PoD would be sufficiently protective of PNS effects in pups. As a result of this uncertainty EPA must retain some portion of the children's safety factor as described below.

C. Safety Factor for Infants and Children

1. *In general.* Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines, based on reliable data, that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA assessments either directly through use of a margin of exposure analysis or through using uncertainty (safety) factors in calculating a dose level that poses acceptable risk to humans.

In applying the children's safety factor provision, EPA has interpreted the statutory language as imposing a presumption in favor of applying an additional 10X safety factor (Ref. 105). Thus, EPA generally refers to the additional 10X factor as a presumptive or default 10X factor. EPA has also made clear, however, that the presumption can be overcome if reliable data demonstrate that a different factor is safe for children (Id.). In determining whether a different factor is safe for children, EPA focuses on the three factors listed in section 408(b)(2)(C) - the completeness of the toxicity database, the completeness of the exposure database, and potential pre- and post-natal toxicity. In examining these factors, EPA strives to make sure that its choice of a safety factor, based on a weight-of-the-evidence evaluation, does not understate the risk to children. (Id.). The Agency's approach to evaluating whether sufficient ''reliable'' data exist to support the reduction or removal of the statutory default 10X is described below in Figure 1.

Figure 1. Scheme for Children's Safety Factor Evaluation for Carbofuran and other NMC Pesticides



2. *Prenatal and postnatal sensitivity.* Prenatal developmental toxicity studies with carbofuran in rat and rabbit, in addition to the reproductive toxicity and developmental neurotoxicity (DNT) studies do not provide evidence for developmental or reproductive effects from *in utero* exposure. Moreover, effects noted in these studies are less sensitive than AChE inhibition. Post-natal exposure to juvenile rat pups provides the most sensitive lifestage in available animal toxicology studies with NMCs, including carbofuran (Refs. 19, 107, 108, and 124).

As noted in the previous section, there are several studies in juvenile rats that show they are more sensitive than adult rats to the effects of carbofuran. These effects include inhibition of brain AChE in addition to the incidence of clinical signs of neurotoxicity (such as tremors) at lower doses in the young rats. The SAP concurred with EPA that the data clearly indicate that the juvenile rat is more sensitive than the adult rat with regard to brain AChE (Ref. 44). However, the Agency does not have AChE data for carbofuran in the peripheral tissue of adult or juvenile animals; nor does the Agency have adequate RBC AChE inhibition data at low doses relevant to risk assessment to serve as a surrogate in pups. As previously noted the RBC AChE data from both FMC supported studies are not reliable and thus are not appropriate for use in risk assessment. Although the EPA studies did provide reliable RBC data, they did not include data at the low end of the dose-response curve, which is the area on the dose-response curve most relevant for risk assessment.

There is indication in a toxicity study where pregnant rats were exposed to carbofuran that effects on the PNS are of concern; specifically, chewing motions

or mouth smacking was observed in a clear dose-response pattern immediately following dosing each day (Ref. 116). Based on this study, the California Department of Pesticide Regulation calculated a BMD_{05} and $BMDL_{05}$ of 0.02 and 0.01 mg/kg/day, and established the acute PoD (Refs. 15 and 44). These BMD estimates are notable as they are close to the values EPA has calculated for brain AChE inhibition and which are being used as the PoD for extrapolating risk to children. It is important to note that these clinical signs have been reported for at least one other cholinesterase inhibiting pesticide at doses producing only blood, not brain, AChE inhibition (Ref. 68). Thus, although RBC AChE inhibition is not an adverse effect, per se, blood measures are used as surrogates in the absence of peripheral tissue data. Assessment of potential for neurotoxicity in peripheral tissues is a critical element of hazard characterization for NMCs like carbofuran. The lack of an appropriate surrogate to assess the potential for RBC AChE inhibition at low doses is a key uncertainty in the carbofuran toxicity database. Thus, EPA cannot conclude that reliance on the pup brain data solely as the PoD will be protective of PNS effects in pups.

To account for the lack of data in the PNS and/or a surrogate (*i.e.*, RBC AChE inhibition data) in pups at the low end of the response curve, and for the fact that RBC AChE inhibition appears to be a more sensitive point of departure compared to brain AChE inhibition (and is considered an appropriate surrogate for the PNS), EPA is retaining a portion of the children's safety factor. On the other hand, there are data available, albeit incomplete, which characterize the toxicity of carbofuran in juvenile animals, and the Agency believes the weight-of-the-evidence supports reducing the statutory factor of 10X to a value lower than 10X. This results in a children's safety factor that is less than 10 but more than 1.

This modified children's safety factor should take into account the greater sensitivity of the RBC AChE. The preferred approach to comparing the relative sensitivity of brain and RBC AChE inhibition would be to compare the BMD_{10} estimates. However, as described above, BMD_{10} estimates from the available RBC AChE inhibition data are not reliable due to lack of data at the low end of the dose response curve. As an alternative approach, EPA has used the ratio of brain to RBC AChE inhibition at the BMD_{50}, since there are quality data at or near the 50% response level such that a reliable estimate can be calculated. There is, however, an assumption associated with using the 50% response level—namely that the magnitude of difference between RBC and brain AChE inhibition is constant across dose. In other words, EPA is assuming the RBC and brain AChE dose response curves are parallel. There are currently no data to test this assumption for carbofuran.

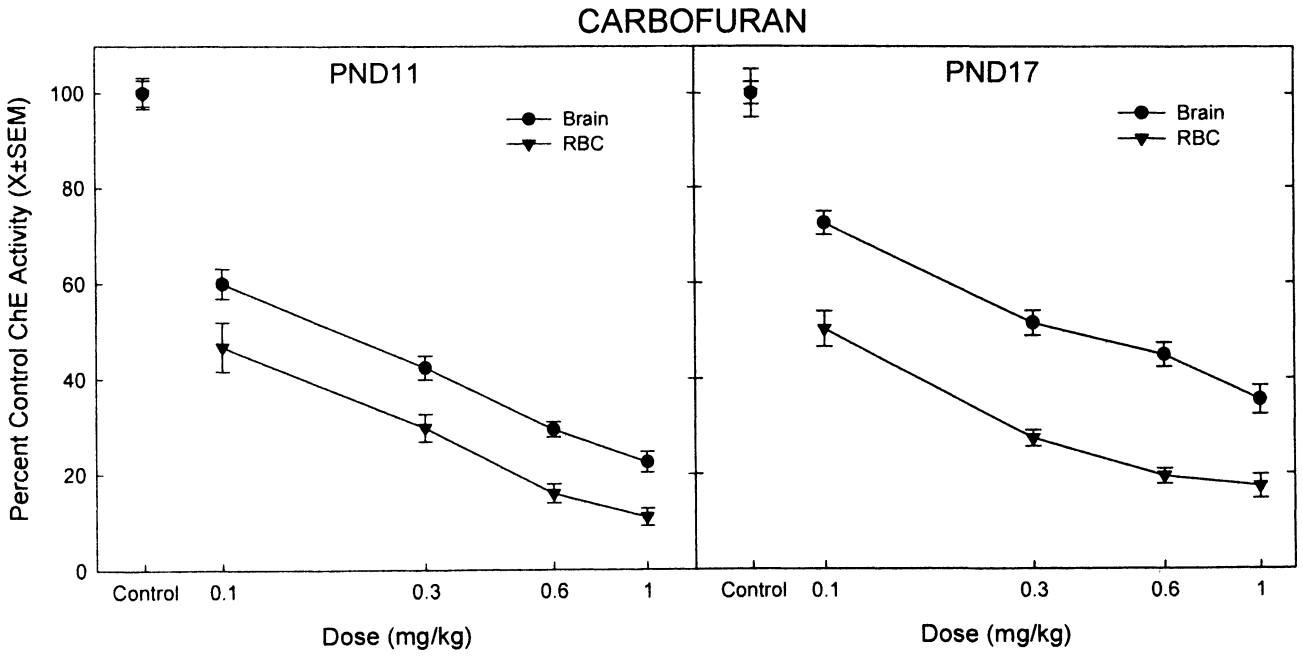
The Agency has determined that a children's safety factor of 4X is appropriate based on a weight-of-evidence approach. This safety factor is calculated using the ratio of RBC and brain AChE inhibition, using the data on administered dose for the PND11 animals from the EPA-ORD studies and the FMC studies combined. In other words, EPA estimated the BMD_{50} for PND11 animals for RBC and brain from each quality study and used the ratio from the combined analysis, resulting in a BMD_{50} ratio of 4.1X. EPA estimated the RBC to brain potency ratio using EPA's data for RBC (the only reliable RBC data in PND11 animals for carbofuran) and all available data in PND11 animals for brain.

EPA also compared the BMD_{50} ratios for PND17 pups (who are slightly less sensitive than 11-day olds; see Figure 2) in the EPA-ORD study, to confirm that the differences in sensitivity between RBC and brain were not unique to the PND11 data. The result of EPAs modeling shows a BMD_{50} ratio of 2.6[4] X between brain and RBC in the PND17 pups.

On the basis of the available data, EPA believes that application of a 4X factor will be ''safe'' for infants and children. This selection was made based on: (1) The remaining uncertainty regarding lack of an appropriate measure of peripheral toxicity (*i.e.*, lack of RBC AChE inhibition data at the low end of the dose response curve), and (2) the RBC to brain AChE ratio at the BMD_{50} for PND11 animals of 4.1X.

[4] One commenter noted that EPA had inadvertently failed in its BMD analysis of the PND17 data, to convert the units from hours to minutes. EPA has corrected its error, and has recalculated the BMD_{50}s for the PND17 animals, using the corrected times. The BMD_{50} ratio for brain and RBC is now 2.6, rather than the 3.3 originally estimated based on its original oversight.

Figure 2. Comparison of Brain and RBC AChE Inhibition in PND11 and PND17 Pups



EPA presented its dietary risk assessment of carbofuran to the FIFRA SAP, and requested comment on the Agency's approach to selecting the PoD and the children's safety factor. As described in the proposal, the Agency believes that the Panel's responses unambiguously support the Agency's approach with regard to carbofuran's hazard identification and hazard characterization (73 FR 44864). In addition, EPA believes that, on balance, the application of a 4X children's safety factor is consistent with the SAP's advice. Additional detail on the SAP's advice and EPA's responses can be found at Reference 34.

EPA received the greatest number of comments for the proposed tolerance revocation on the children's safety factor. However, none of the commenters provided any new data nor information that changes the Agency's major conclusions with regard to the uncertainty factor, and the methodology used to assess risks as a result of dietary exposures to carbofuran.

In sum, EPA has concluded that there is reliable data to support the application of a 4X safety factor and has therefore applied this safety factor in its dietary risk estimates.

D. Hazard Characterization and Point of Departure Conclusions.

The doses and toxicological endpoints selected and Margins of Exposures for various exposure scenarios are summarized below.

TABLE 1.—TOXICOLOGY ENDPOINT SELECTION TABLE

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA factor and Endpoint for Risk Assessment	Study and Toxicological Effects
Acute Dietary Infants and Children	$BMDL_{10}$ = 0.03 mg/kg/day UF = 100 Acute RfD = 0.0003 mg/kg/day	Children's SF = 4X aPAD = 0.000075 mg/kg/day	Comparative AChE Studies in PND11 rats (FMC and EPA-ORD) BMD_{10} = 0.04 mg/kg/day $BMDL_{10}$ = 0.03 mg/kg/day, based on brain AChE inhibition of postnatal day 11 (PND11) pups
Acute Dietary Youth (13 and older) and Adults	$BMDL_{10}$ = 0.02 mg/kg/day UF = 100 Acute RfD = 0.00024 mg/kg/day	aRfD = 0.0002 mg/kg/day	Comparative AChE Study (EPA-ORD), Padilla et al (2007), McDaniel et al (2007) BMD_{10} = 0.06 mg/kg/day $BMDL_{10}$ = 0.02 mg/kg/day, based on RBC AChE inhibition in adult rat

E. Dietary Exposure and Risk Assessment

1. *Dietary exposure to carbofuran—Food*—a. *EPA methodology and background*. As noted earlier, in their September 29, 2008 comments on the Agency's risk assessment, FMC requested cancellation of a large number of domestic food uses, including, among other uses, artichokes, peppers, and all cucurbits except pumpkins. EPA granted the request, and accordingly, conducted a refined (Tier 3) acute probabilistic dietary risk assessment for the remaining carbofuran residues in food. The remaining sources of ''food'' exposures are from the domestic uses of field corn, potato, sunflower, pumpkins, as well as milk (indirect residues through use on corn, potatoes and sunflower), and from four import tolerances (bananas, coffee, sugarcane, and rice). To conduct the assessment, EPA relied on DEEM-FCID(TM), Version 2.03, which uses food consumption data from the USDA's CSFII from 1994–1996 and 1998.

Using data on the percent of the crop actually treated with carbofuran and data on the level of residues that may be present on the treated crop, EPA developed estimates of combined anticipated residues of carbofuran and 3-hydroxycarbofuran on food. 3-hydroxycarbofuran is a degradate of carbofuran and is assumed to have toxic potency equivalent to carbofuran (Refs. 16 and 20). Anticipated residues of carbofuran for most foods were derived using USDA PDP monitoring data from recent years (through 2006 for all available commodities). In some cases, where PDP data were not available for a particular crop, EPA translated PDP monitoring data from surrogate crops based on the characteristics of the crops and the use patterns. For example, PDP data for winter squash were used to derive anticipated residues for pumpkins.

The PDP analyzed for parent carbofuran and its metabolite of concern, 3-hydroxycarbofuran. Most of the samples analyzed by the PDP were measured using a high Level of Detection (LOD) and contained no detectable residues of carbofuran or 3-hydroxycarbofuran. Consequently, the acute assessment for food assumed a concentration equal to one-half of the LOD for PDP monitoring samples with no detectable residues, and zero ppm carbofuran to account for the percent of the crop not treated with carbofuran.

An additional source of data on carbofuran residues was provided by a market basket survey of NMC pesticides in single-serving samples of fresh fruits and vegetables collected in 1999-2000 (Ref. 18), which was sponsored by the Carbamate Market Basket Survey Task Force. EPA relied on these data to construct the residue distribution files for bananas because the use of these data resulted in more refined exposure estimates. The combined Limits of Quantitation (LOQs) for carbofuran and its metabolite in the Market Basket Survey (MBS) were between tenfold and twentyfold lower than the combined LODs in the PDP monitoring data.

For certain crops where PDP data were not available (sugarcane, and sunflower seed), anticipated residues were based on field trial data. EPA also relied on field trial data for particular food commodities that are blended during marketing (field corn and rice), as use of PDP data can result in significant overestimates of exposure when evaluating blended foods. Field trial data are typically considered to overestimate the residues that are likely to occur in food as actually consumed because they reflect the maximum application rate and shortest preharvest interval allowed by the label. However, for crops that are blended during marketing, such as corn or wheat, use of field trial data can provide a more refined estimate than PDP data, by allowing EPA to better account for the percent of the crop actually treated with carbofuran.

EPA used average and maximum PCT estimates for most crops, following the guidance provided in HED SOP 99.6 (*Classification of Food Forms with Respect to level of Blending*; 8/20/99), and available processing and/or cooking factors. The maximum PCT estimates were used to refine the acute dietary exposure estimates. Maximum PCT ranged from <1 to 10%. The estimated percent of the crop imported was applied to crops with tolerances currently maintained solely for import purposes (banana, coffee, sugarcane, and rice).

b. *Acute dietary exposure (food alone) conclusions*. The estimated acute dietary exposure from carbofuran residues in food alone (*i.e.*, assuming no additional carbofuran exposure from drinking water), are below EPA's level of concern for the U.S. Population and all population subgroups. Children 1 to 2 years of age (78% aPAD) were the most highly exposed population subgroup when food only was included. The major driver of the acute dietary exposure risk (food only) for Children 1 to 2 years is milk at greater than 90% of the exposure. (See results from Table 2 below).

TABLE 2.—RESULTS OF ACUTE DIETARY EXPOSURE ANALYSIS FOR FOOD ALONE

Population Subgroup	aPAD (mg/kg/day)	99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000013	18	0.000039	52
Children 1–2 years old	0.000075	0.000024	32	0.000058	78
Children 3–5 years old	0.000075	0.000015	20	0.000034	45
Children 6–12 years old	0.000075	0.000010	13	0.000022	29

Exposure estimates for all of the major food contributors were based on PDP monitoring data adjusted to account for the percent of the crop treated with carbofuran and, therefore, may be considered highly refined.

As noted previously, in response to comments, the Agency revised its PCT estimates for the bananas from 78% to 25%. The Agency also developed a regional PCT estimate for potatoes of 5% based on projected limited use in the Northwest, and has applied that estimate in its revised dietary risk assessment (Ref. 71). Based on the estimated 5% crop treated for potato, which is the highest PCT of any feed stuff that can be treated with carbofuran, EPA estimated a 5% CT for milk.

The Agency notes that these PCT changes on bananas, potatoes and milk had relatively modest effects on the dietary exposure estimates. The PCT estimates are used by the Agency to account for the fact that not all samples are treated, and that some fraction of samples (specifically, the complement to the PCT fraction) actually have residues of zero. This allows the Agency to incorporate a residue concentration of zero (a true zero) for that fraction of the crop which is not treated and a residue concentration of ½ the analytical limit of detection for that portion of the crop which is treated, but show no detectable residues because of insufficient sensitivity of the analytical method. Specifically in this case, if one were to assume for banana, potatoes, and milk that all samples without detectable residues were not treated and are thus ''true zeroes,'' then exposure at the per capita 99.9th percentile falls only slightly: from 77.8% to 75.2% of the aPAD for children 1 to 2 years old, and from 45.4% to 44.1% of the aPAD for children 3-5 years old.

The relative insensitivity of exposure estimates to PCT found under EPA's most recent risk assessment based on the September 2008 revised label, is counter to earlier sensitivity analyses that the Agency performed that indicate exposures at the per capita 99.9th percentile fall by about 50% when all non-detects were set at 0 ppm (Ref. 70). Those effects were due to the watermelons and other commodities (cucumbers, cantaloupes) that were the primary source of unacceptable single exposures. The Half LODs for the four domestic uses that the commenters currently are interested in retaining, and milk, are relatively low, such that exposures from residues at Half LOD concentrations produce nominal contributions to high-end exposures.

As a further consequence of the cancellation of the use on melons and cucmbers, the risk assessment now shows that single exposures from food alone are not expected to be the source of unacceptable single eating events. However, as discussed in Unit VIII.E.2. below, concerns still remain that children will receive unacceptable exposures from a single consumption of contaminated drinking water. Further, even after accounting for carbofuran's reversibility throughout the day and the fact that drinking water can be consumed over multiple occasions during the day, EPA has concluded that carbofuran exposures through the drinking water pathway exceed the Agency's level of concern for infants and children.

2. *Drinking water exposures*. EPA's drinking water assessment uses both monitoring data for carbofuran and modeling methods, and takes into account contributions from both surface water and ground water sources (Refs. 17, 54, 58, 61, and 84). Concentrations of carbofuran in drinking water, as with any pesticide, are in large part determined by the amount, method, timing and location of pesticide application, the chemical properties of the pesticide, the physical characteristics of the watersheds and/or aquifers in which the community water supplies or private wells are located, and other environmental factors, such as rainfall, which can cause the pesticide to move from the location where it was applied. While there is a considerable body of monitoring data that has measured carbofuran residues in surface and ground water sources, the locations of sampling and the sampling frequencies generally are not sufficient to capture peak concentrations of the pesticide in a watershed or aquifer where carbofuran is used. Capturing these peak concentrations is particularly important for assessing risks from carbofuran because the toxicity end-point of concern results from single-day exposure (acute effects). Because pesticide loads in surface water tend to move in relatively quick pulses in flowing water, frequent targeted sampling is necessary to reliably capture peak concentrations for surface water sources of drinking water. Pesticide concentrations in ground water, however, are generally the result of longer-term processes and less frequent sampling can better characterize peak ground water concentrations. However, such data must be targeted at vulnerable aquifers in locations where carbofuran applications are documented in order to capture peak concentrations. As a consequence, monitoring data for both surface and ground water tends to underestimate exposure for acute endpoints. Simulation modeling complements monitoring by making estimations at vulnerable sites and can be used to represent daily concentration profiles, based on a distribution of weather conditions. Thus, modeling can account for the cases when a pesticide is used in drinking water watersheds at any rate and is applied to a substantial proportion of the crop. It can also account for stochastic processes, such as rainfall represented by 30 years of existing weather data maintained by NOAA.

a. *Exposure to carbofuran from drinking water derived from ground water sources*. Drinking water taken from shallow wells is highly vulnerable to contamination in areas where carbofuran is used around sandy, highly acidic soil, although sites that are less vulnerable (*e.g.*, deeper aquifer, higher organic matter) could still be prone to have concentrations exceeding acceptable exposures. The results of the ground water modeling simulations from the South-Central Wisconsin scenario show that the persistence of carbofuran in ground water is dependent on soil and water pH, and what might appear as relatively small variations in soil pH can have a significant impact on estimates of carbofuran in ground water. Estimated 1–in–10-year peak ground water concentrations at pH 7 are 1.6×10^{-3} µg/L; however, the estimated 1–in–10-year peak ground water concentration at pH 6.5 is 16 µg/L, nearly 4 orders of magnitude greater. Because of carbofuran's sensitivity to pH, EPA has concerns that any given set of mitigation measures will not successfully protect ground water source drinking water. Data indicate that pH varies across an agricultural field, and also with depth (Ref. 64). In particular, the pH can be different in ground water than in the overlying soil. The upper bound of the carbofuran concentrations estimated by EPA at pH 6.5 is much greater than the concentrations FMC report in their comments.

In EPA's revised assessment, ground water concentrations were estimated for all remaining crops on carbofuran labels, and used two new Tier 2 scenarios. Based on a new corn scenario, representative of potentially vulnerable areas in the upper Midwest, EPA estimated 1–in–10-year concentrations for ground water source drinking water of 16 to 1.6 x 10-*3* µg/L, for pH 6.5 and 7, respectively. A potato scenario representing use in the Northwest estimated no measurable concentrations of carbofuran in ground water. Other remaining uses were modeled using a Tier 1 ground water model (Screening Concentration in-Groundwater) with estimated peak 90–day concentrations of 48 – 178 µg/L, depending on application rate. Well setback prohibitions of 50 feet were proposed on the new label for the flowable and granular formulations in select counties in Kentucky (seven counties), Louisiana (one county), Minnesota (one county), and Tennessee (one county). Analysis of the impact of these setbacks for the use on corn indicated that the setbacks would not reduce concentrations significantly at locations where exposure to carbofuran in ground water is of concern because

at acid pHs, carbofuran does not degrade sufficiently during the travel time from the application site to the well to substantially reduce the concentration.

Exposure estimates for this assessment are drawn primarily from EPA's modeling. To conduct its modeling, EPA examined readily available data with respect to ground water and soil pH to evaluate the spatial variability of pH. Ground water pH values can span a wide range; this is especially true for shallow ground water systems, where local conditions can greatly affect the quality and characteristics of the water (higher or lower pHs compared to average values). Thus, average ground water pH values for a given area do not truly characterize the (temporal and especially spatial) heterogeneity common in most areas. This can be seen by comparing differences in pH values between counties within a state, and noting that even within each county specific area, wells will consistently yield ground water with either above- or below-average pH values for that county. The ground water simulations reflect variability in pH by modeling carbofuran leaching in four different pH conditions (pH 5.25, 6.5, 7.0, and 8.7), representing the range in the Wisconsin aquifer system. The upper and lower bound of pH values that EPA chose for this assessment were measured values from the aquifer, and the remaining two values were chosen to reflect common pH values between the measured values.

The Idaho potato scenario is representative of areas where ground water is relatively deep and the soils have a relatively alkaline pH. The results from the Idaho potato ground water simulation estimated no measurable concentrations of carbofuran in ground water. This is consistent with EPA's findings above, as soils where potatoes are typically grown are more alkaline.

The results of EPA's revised corn modeling, based on a new scenario in Wisconsin, are consistent with the results of the PGW study developed by the registrant in Maryland in the early 1980s. Using higher use rates than currently permitted, the peak concentration measured in the PGW study was 65 ppb; when scaled to current use rates, the estimated peak concentration was 11 ppb. EPA's modeling is also consistent with a number of other targeted ground water studies conducted in the 1980s showing that high concentrations of carbofuran can occur in vulnerable areas; the results of these studies as well as the PGW study are summarized in References 17 and 84. For example, a study in Manitoba, Canada assessed the movement of carbofuran into tile drains and ground water from the application of liquid carbofuran to potato and corn fields. The application rates ranged between 0.44–0.58 pounds a.i./acre, and the soils at the site included fine sand, loamy fine sand, and silt loam, with pH ranging between 6.5-8.3. Concentrations of carbofuran in ground water samples ranged between 0 (non-detect) and 158 ppb, with a mean of 40 ppb (Refs. 17 and 84).

While there have been additional ground water monitoring studies that included carbofuran as an analyte since that time, there has been no additional monitoring targeted to carbofuran use in areas where aquifers are vulnerable. However, as discussed in the next section, data compiled in 2002 by EPA's Office of Water show that carbofuran was detected in treated drinking water at a few locations. Based on samples collected from 12,531 ground water supplies in 16 states, carbofuran was found at one public ground water system at a concentration of greater than 7 ppb and in two ground water systems at concentrations greater than 4 ppb (measurements below this limit were not reported). An infant receiving these concentrations receive 220% of the aPAD or 130% aPAD, respectively, based on a single 8 ounce serving of water. As this monitoring was not targeted to carbofuran, the likelihood is low that these samples capture peak concentrations. Given the lack of targeted monitoring, EPA has primarily relied on modeling to develop estimates of carbofuran residues in ground water sources of drinking water.

Based on EPA's assessment, the maximum 1–in–10–year peak carbofuran concentrations in vulnerable ground water for a single application on corn in Wisconsin, at a rate of 1 pound per acre were estimated to range from a low of less than 1 ppb based on a pH of 7 or higher, to a high of 16 ppb, based on a pH of 6.5[5]. Because the degradate, 3-hydroxycarbofuran, which is assumed to be of equal potency with the parent compound, was not measured in the PGW study, and key environmental fate data are not available to use in modeling, exposure was not estimated. Although the failure to include the degradate is expected to underestimate exposure to some degree, the extent to which it would contribute to exposure is unclear.

EPA compiled a distribution of estimated carbofuran concentrations in water based on these estimates that were used to generate probabilistic assessments of the potential exposures from drinking water derived from vulnerable ground water sources. The results of EPA's probabilistic assessments are represented below in Table 3. As discussed in the previous section, it is important to remember that the aPAD for carbofuran is quite low, hence, relatively low concentrations of carbofuran monitored or estimated in vulnerable ground water can have a significant impact on the aPAD utilized.

TABLE 3.—RESULTS OF ACUTE DIETARY (GROUND WATER ONLY) EXPOSURE ANALYSIS USING DEEM-FCID(TM) AND INCORPORATING THE WISCONSIN GROUND WATER SCENARIO, pH OF 6.5 (REPRESENTING PRIVATE WELLS)

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.001602	2,100	0.003536	4,700	0.007078	9,400
Children 1–2 years old	0.000075	0.000677	900	0.001481	2,000	0.003163	4,200
Children 3–5 years old	0.000075	0.000623	830	0.001345	1,800	0.002845	3,800

[5] Although higher estimates were generated at a pH of 5.25, use should be precluded in such sites based on the September 2008 labels.

TABLE 3.—RESULTS OF ACUTE DIETARY (GROUND WATER ONLY) EXPOSURE ANALYSIS USING DEEM-FCID(TM) AND INCORPORATING THE WISCONSIN GROUND WATER SCENARIO, pH OF 6.5 (REPRESENTING PRIVATE WELLS)—Continued

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
Children 6–12 years old	0.000075	0.000431	570	0.000934	1,200	0.002015	2,700
Youth 13–19 years old	0.0002	0.000334	170	0.000756	380	0.001743	870
Adults 20–49 years old	0.0002	0.000414	210	0.000893	450	0.001890	950
Adults 50+ years old	0.0002	0.000413	210	0.000852	430	0.001546	770

While the registrant has attempted to address drinking water exposure from ground water sources by including additional restrictions on their September 2008 proposed labels, EPA's analyses show that these do not sufficiently reduce exposures to acceptable levels. The proposed labels include well setback prohibitions at 50–foot-distances for the flowable and granular formulations in a select set of counties in Kentucky, Louisiana, Minnesota, and Tennessee. The impact of the well setbacks was modeled for the corn use using the approach developed for the NMC cumulative assessment (Ref. 107), resulting in reductions in concentrations that vary with pH (to account for degradation of the compound in subsurface flow from the application site to a private well down gradient). At acid pHs the slow degradation rate reduced the effectiveness of a 50–foot well setback at the well head (1–in–10–year peak concentration of 16 to 14 µg/L, a reduction factor of 0.73 at pH 6.5). Additional setback distances (100, and 300 ft) were evaluated using an aquifer pH of 6.5, resulting in reduction factors of 0.54 and 0.16, respectively. At alkaline pH, the 50-foot setback is effective, but concentrations at these sites are already low due to hydrolytic degradation occurring during recharge. These results suggest that a 50–foot well setback is less effective in low pH environments due to the persistence of carbofuran under these conditions.

In addition, the revised labels prohibit use throughout the Atlantic Coastal plain, and prohibit application to areas with soils greater than 90% sand and less than 1% organic matter, acidic soil and water conditions, and where shallow water tables predominate (*e.g.*, where ground water is less than 30 feet). While EPA agrees in principle that precluding use in sites vulnerable to leaching can mitigate the risks, and even presuming that the methodology used by FMC adequately identifies those sites, these criteria are not sufficient to prohibit use in all areas that could reasonably be expected to be vulnerable to ground water contamination from carbofuran use. Based on carbofuran's characteristics, a diversity of soil conditions in the remaining proposed use area, and available monitoring data, there are valid scientific reasons to believe that additional soil and site characteristics could result in ground water contamination. For example, water table depth can vary with the time of the year, depending on such factors as the amount of rainfall that has occurred in the recent past, and how much irrigation has been applied to a field or removed from the aquifer. It is difficult to determine how the depth to the water table varies throughout fields, and the definition of a ''shallow'' water table on the September 2008 label is indeterminate (*e.g.*, less than 30 ft.). Furthermore, the vulnerability associated with depth varies with location, for example, deeper aquifers may be vulnerable in areas with greater precipitation and rapid recharge. The September 2008 label restrictions in no way addressed these less sensitive, but still vulnerable, sites (Refs. 94 and 111). Accordingly, EPA continues to believe that its assessment of drinking water from ground water sources based on current labels is a reasonable assessment of potential exposures to those portions of the population consuming drinking water from shallow wells in highly vulnerable areas.

b. *Exposure from drinking water derived from surface water sources.* EPA's evaluation of environmental drinking water concentrations of carbofuran from surface water, as with its evaluation of ground water, takes into account the results of both surface water monitoring and modeling.

Data compiled in 2002 by EPA's Office of Water show that carbofuran was detected in treated drinking water at a few locations. Based on samples collected from 12,531 ground water and 1,394 surface water source drinking water supplies in 16 states, carbofuran was found at no public drinking water supply systems at concentrations exceeding 40 ppb (the MCL). Carbofuran was found at one public ground water system at a concentration of greater than 7 ppb and in two ground water systems and one surface water public water system at concentrations greater than 4 ppb (measurements below this limit were not reported). Sampling is costly and is conducted typically four times a year or less at any single drinking water facility. The overall likelihood of collecting samples that capture peak exposure events is, therefore, low. For chemicals with acute risks of concern, such as carbofuran, higher concentrations and resulting risk is primarily associated with these peak events, which are not likely to be captured in monitoring unless the sampling rate is very high.

Unlike drinking water derived from private ground water wells, drinking water from public water supplies (surface water or ground water source) will generally be treated before it is distributed to consumers. An evaluation of laboratory and field monitoring data indicate that carbofuran may be effectively removed (60 – 100%) from drinking water by lime softening and activated carbon; other treatment processes are less effective in removing carbofuran (Ref. 107). The detections between 4 and 7 ppb, reported above, represent concentrations in samples collected post-treatment. As such, these levels are of particular concern to the Agency. An infant who consumes a single 8–ounce serving of water with a concentration of 4 ppb, as detected in the monitoring, would receive approximately 130% of the aPAD from water consumption alone. An infant who consumes a single 8–ounce serving of water with the higher detected concentration of 7 ppb, as detected in the monitoring, would receive approximately 220% of the aPAD from water consumption alone.

To further characterize carbofuran concentrations in surface water (*e.g.*,

streams or rivers) that may drain into drinking water reservoirs, EPA analyzed the extensive source of national water monitoring data for pesticides, the USGS NAWQA program. The NAWQA program focuses on ambient water rather than on drinking water sources, is not specifically targeted to the high use area of any specific pesticide, and is sampled at a frequency (generally weekly or bi-weekly during the use season) insufficient to provide reliable estimates of peak pesticide concentrations in surface water. For example, significant fractions of the data may not be relevant to assessing exposure from carbofuran use, as there may be no use in the basin above the monitoring site. Unless ancillary usage data are available to determine the amount and timing of the pesticide applied, it is difficult to determine whether non-detections of carbofuran were due to a low tendency to move to water or from a lack of use in the basin. The program, rather, provides a good understanding on a national level of the occurrence of pesticides in flowing water bodies that can be useful for screening assessments of potential drinking water sources. A detailed description of the pesticide monitoring component of the NAWQA program is available on the NAWQA Pesticide National Synthesis Project (PNSP) web site (http://ca.water.usgs.gov/pnsp/).

A summary of the first cycle of NAWQA monitoring from 1991 to 2001 indicates that carbofuran was the most frequently detected carbamate pesticide in streams and ground water in agricultural areas. Overall, where carbofuran was detected, these non-targeted monitoring results generally found carbofuran at levels below 0.5 ppb. In the NMC assessment, EPA summarized NAWQA monitoring for carbofuran between 1991 and 2004. Maximum surface-water concentrations exceeded 1 ppb in approximately nine agricultural watershed-based study units, with detections in the sub-parts per billion range reported in additional watersheds (Ref. 107). The highest concentrations of carbofuran are reported from a sampling station on Zollner Creek, in Oregon. Zollner Creek, located in the Molalla-Pudding sub-basin of the Willamette River, is not directly used as a drinking water source. This creek is a low-order stream and its watershed is small (approximately 40 km^2) and intensively farmed, with a diversity of crops grown, including plant nurseries. USGS monitoring at that location from 1993 to 2006 detected carbofuran annually in 40–100 % of samples. Although the majority of concentrations detected there are also in the sub-part per billion range, concentrations have exceeded 1 ppb in 8 of the 14 years of sampling. The maximum measured concentration was 32.2 ppb, observed in the spring of 2002. The frequency of detections generally over a 14–year period suggests that standard use practices rather than aberrational misuse incidents in the region are responsible for high concentration levels at this location.

While available monitoring from other portions of the country suggests that the circumstances giving rise to high concentrations of carbofuran may be rare, overall, the national monitoring data indicate that EPA cannot dismiss the possibility of detectable carbofuran concentrations in some surface waters under specific use and environmental conditions. Even given the limited utility of the available monitoring data, there have been relatively recent measured concentrations of carbofuran in surface water systems at levels above 4 ppb and levels of approximately 1 to 10 ppb measured in streams representative of those in watersheds that support drinking water systems (Ref. 107). Based on this analysis, and since monitoring programs have not been sampling at a frequency sufficient to detect daily-peak concentrations that are needed to assess carbofuran's acute risk, the available monitoring data, in and of themselves, are not sufficient to establish that the risks posed by carbofuran in surface drinking water are below thresholds of concern. Nor can the non-detections in the monitoring data be reasonably used to establish a lower bound of potential carbofuran risk through this route of exposure.

To further characterize carbofuran risk through drinking water derived from surface water sources, EPA modeled estimated daily drinking water concentrations of carbofuran using PRZM to simulate field runoff processes and EXAMS to simulate receiving water body processes. These models were summarized in Unit V.B.2.

There are sources of uncertainty associated with estimating exposure of carbofuran in surface water source drinking water. Several of the most significant of these are the effect of treatment in removing carbofuran from finished drinking water before it is delivered to the consumer supply system, the impact of percent crop treated assumptions, and the variation in pH across the landscape. The effect of the percent crop treated assumption in the case of carbofuran is discussed in detail in EPA's assessment of additional data submitted by the registrant (Refs. 22 and 94) and summarized below. Available data on the degree to which carbofuran may be removed from treatment systems was summarized previously and is discussed in more detail in Appendix E-3 of the Revised NMC CRA (Ref. 107). Although EPA is aware of the mitigating effects of specific treatment processes, the processes employed at public water supply utilities across the country vary significantly both from location to location and throughout the year, and therefore are difficult to incorporate quantitatively in drinking water exposure estimates. For example, lime softening would likely reduce carbofuran concentrations. That process is used in 3 to 21% of drinking water treatment systems in the United States (Ref. 19). Activated carbon has been shown to also reduce carbofuran concentrations, but is used in 1 to 15% of drinking water treatment facilities (Ref. ibid.). Therefore, EPA assumes that there is no reduction in carbofuran concentrations in surface water source drinking water due to treatment, which is a source of conservatism in surface water exposure estimates used for human health risk assessment. While it is well established that carbofuran will degrade at higher rates when the pH is above 7, and lower rates when below pH 7, due to the high variation of pH across the country for many of the scenarios, a neutral pH (pH 7) default value was used to estimate water concentrations. Finally, available environmental fate studies do not show formation of 3-hydroxycarbofuran through most environmental processes except soil photolysis, where in one study it was detected in very low amounts. Although 3-hydroxycarbofuran was not explicitly considered as a separate entity in the drinking water exposure assessment, it is unclear whether it would significantly add to exposure estimates.

EPA compiled a distribution of estimated carbofuran concentrations in surface water in order to conduct probabilistic assessments of the potential exposures from drinking water. For the IRED, EPA modeled crops representing 80 percent of total carbofuran use at locations that would be considered among the more vulnerable where the crops are grown. Subsequently, for a refined dietary risk assessment, EPA generated distributions for 13 different scenarios representing all labeled uses of carbofuran treated at maximum label rates and adjusted with PCA factors (Refs. 17, 53, and 84).

EPA subsequently conducted several rounds of modeling to refine estimates for specific uses and agricultural practices. One set of refinements addressed use of carbofuran on corn at

typical rather than maximum label rates, another set included simulation of different types of applications to corn (*e.g.*, applications to control European corn borer, a rescue treatment for corn rootworm, and an in-furrow application at plant).

For this final rule, EPA conducted additional refined modeling, based on the September 2008 label submitted by FMC. The modeling addressed all of the domestic uses that remain registered, and included certain refinements to better understand the impacts of varying pH. EPA also conducted modeling to assess the impact of the proposed spray drift buffer requirements and other spray drift measures included on the September label.

EPA estimated carbofuran concentrations resulting from the use on pumpkins by adjusting the EDWCs from a previous run simulating melons in Missouri; adjustments accounted for differences in application rate and row spacing. Two EDWCs were calculated for pumpkins: One based on a 36–inch row spacing, representing pumpkins for consumption (77.6 µg/L); and a second based on a 60–inch row spacing, representing decorative pumpkins (46.6 µg/L).

EPA had previously evaluated the corn rootworm rescue treatment at seven representative sites, representing use in states with extensive carbofuran usage at locations more vulnerable than most in each state in areas corn is grown. Using measured rainfall values, and assuming typical rather than maximum use rates, peak concentrations for the corn rescue treatments simulated for Illinois, Iowa, Indiana, Kansas, Minnesota, Nebraska, and Texas ranged from 16.6 – 36.7 ppb (Ref. 61). Under the revised assessment to account for the new use restrictions, concentrations for corn, calculated including the proposed spray drift buffers in Kansas and Texas, decreased 5.1% and 4.7%, respectively, from simulations with no buffer from the previous assessment (Ref. 61). In Kansas, the 1–in–10-year peak EDWCs decreased from 33.5 to 31.8 ppb when a 300–foot buffer was added, and in Texas, from 29.9 to 28.5 ppb with the addition of a 66–foot buffer.

For the sunflower use, 12 simulations were performed for sunflowers, 9 in Kansas, and 3 in North Dakota. The North Dakota scenario was used to represent locations where sunflowers are grown that are vulnerable to pesticide movement to surface water while the Kansas scenario represents places that are not particularly vulnerable, based on the limited rainfall and generally well-drained soils (hydrologic group B soils) that are found in that area. Estimated 1–in–10–year concentrations ranged from 11.6 to 32.7 µg/L. When simulating three applications, one at plant and two foliar with a 14–day interval between the two foliar applications and a 66–foot buffer, the 1–in–10-year peak EDWC for North Dakota was 22.4 µg/L. In contrast, the same three applications in Kansas with a 14–day interval between the foliar applications and a 300-foot buffer produced a 1–in–10-year peak EDWC of 20.5 µg/L. The 1–in–10–year peak EDWCs assuming that carbofuran is applied only at plant were 14.0 and 16.0 µg/L in Kansas and North Dakota respectively. EPA also evaluated the impact of pH on carbofuran concentrations for sunflowers, resulting in a 10% decrease in 1–in–10–year peak concentrations assuming high pH in the reservoir. Spray drift buffers of 66 and 300 feet decreased concentrations 4.7 and 5.1% for corn and 10.0% and 16.0% for sunflowers, respectively, in comparison to previous labels that had no spray drift buffer requirements. Additional details on these assessments can be found at Reference 111. Consistent with the analysis summarized above these predicted carbofuran water concentrations are similar or lower than the peak concentrations reported in the USGS-NAWQA monitoring data and similar to or not more than tenfold higher than the 4 ppb reported in finished water from a surface water drinking plant.

There are few surface water field-scale studies targeted to carbofuran use that could be compared with modeling results. Most of these studies were conducted in fields that contain tile drains, which is a common practice throughout midwestern states to increase drainage in agricultural fields (Ref. 17). Drains are common in the upper Mississippi river basin (Illinois, Iowa, and the southern part of Minnesota), and the northern part of the Ohio River Basin (Indiana, Ohio, and Michigan) (Ref. 74). Although it is not possible to directly correlate the concentrations found in most of the studies with drinking water concentrations, these studies confirm that carbofuran use under such circumstances can contaminate surface water, as tile drains have been identified as a conduit to transport water and contaminants from the field to surface waters. For example, one study conducted in the United Kingdom in 1991 and 1992 looked at concentrations in tile drains and surface water treated at a rate of 2.7 lbs a.i. per acre (granular formulation). Resulting concentrations in surface water downstream of the field ranged from 49.4 ppb almost 2 months after treatment to 0.02 ppb 6 months later, and were slightly lower than concentrations measured in the tile drains, which were a transport pathway. Even with the factors that limit the study's relevance to the majority of current carbofuran use—the high use rate and granular formulation—the study clearly confirms that tile drains can serve as a source of significant surface water contamination. Although EPA's models do not account for tile drain pathways, and acknowledging the uncertainties in comparing carbofuran monitoring data to the concentrations predicted from the exposure models, as noted previously, estimated (model-derived) peak concentrations of carbofuran are similar to peak concentrations reported in stream monitoring studies. These are no more than tenfold higher than a value reported from a drinking water plant where it is unlikely the sample design would have ensured that water was sampled on the day of the peak concentration.

EPA conducted dietary exposure analyses based on the modeling scenarios for the proposed September 2008 label. Exposures from all modeled scenarios substantially exceeded EPA's level of concern (Ref. 16). For example, a Kansas sunflower scenario, assuming two foliar applications at a typical 1-lb a.i. per acre use rate, applied at 14–day intervals, estimated a 1–in–10-year peak carbofuran water concentration of 11.6 ppb. Exposures at the 99.9th percentile based on this modeled distribution ranged from 160% of the aPAD for youths 13 to 19 years, to greater than 2,000% of the aPAD for infants. As previously noted, this scenario is intended to be representative of sites that are less vulnerable than most on which sunflowers could be grown. By contrast, exposure estimates from a comparable North Dakota sunflower scenario, intended to represent more vulnerable sites, estimated a 1–in–10-year peak concentration of 22.4 ppb. These concentrations would result in estimated exposures ranging between 450% aPAD for youths 13 to 19 years, to 5,500% aPAD for infants. Similarly, exposures based on a Washington surface water potato scenario, and using a 3 lb a.i. acre rate, ranged from 230% of the aPAD for children 6 to 12 years to 890% of the aPAD for infants, with a 1–in–10-year peak carbofuran concentration of 7.2 ppb. Although other crop scenarios resulted in higher exposures, estimates for these two crops are presented here, as they are major

crops on which a large percentage of carbofuran use occurs. More details on these assessments, as well as the assessments EPA conducted for other crop scenarios, can be found in References 16, 61, and 84.

Restricting the sunflower application to a single at-plant application from three applications reduces the 1–in–10–year peak EDWCs from 32.7 to 16.0 µg/L for the North Dakota scenario and from 20.5 to 14.0 µg/L in western Kansas. These concentrations would result in estimated exposures, based on the North Dakota scenario ranging between 350% aPAD for youths 13 to 19 years, to 4,300% aPAD for infants. Based on the Kansas scenario, the estimated exposures would range between 250% aPAD for youths 13 to 19 years, to 3,100% aPAD for infants.

Table 4 below presents the results of one of EPA's refined exposure analyses that is based on a Nebraska corn rootworm ''rescue treatment'' scenario, and assumes a single aerial application at a typical rate of 1-pound a.i. per acre. To simulate an application made post-plant, at or near rootworm hatch, EPA modeled an application of carbofuran 30 days after crop emergence. EPA used a crop specific PCA of 0.46 which is the maximum proportion of corn acreage in a HUC-8–sized basin in the United States. (The USGS has classified all watersheds in the United States into basins of various sizes, according to hydrologic unit codes, in which the number of digits indicates the size of the basin). The full distribution of daily concentrations over a 30–year period was used in the probabilistic dietary risk assessment. The 1–in–10–year peak concentration of the distribution of values for the Nebraska corn rescue treatment was 22.3 ppb. More details on these assessments, as well as the assessments EPA conducted for other crop scenarios, can be found in References 16, 61, and 84.

TABLE 4.—RESULTS OF ACUTE DIETARY (SURFACE WATER ONLY) EXPOSURE ANALYSIS INCORPORATING THE NEBRASKA CORN ROOTWORM RESCUE SCENARIO

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000424	560	0.001201	1,600	0.002895	3,900
Children 1–2 years old	0.000075	0.000182	240	0.0005047	670	0.001261	1,700
Children 3–5 years old	0.000075	0.000169	230	0.000461	620	0.001137	1,500
Children 6–12 years old	0.000075	0.000117	160	0.000320	430	0.000794	1,100
Youth 13–19 years old	0.0002	0.000087	43	0.000248	120	0.000760	380
Adults 20–49 years old	0.0002	0.000113	57	0.000305	150	0.000760	380
Adults 50+ years old	0.0002	0.000120	60	0.000300	150	0.000672	340

The populations described in the ''Nebraska corn'' assessments are those people who consume water from a reservoir located in a small watershed predominated by corn production (with the assumption that treatment does not reduce carbofuran concentrations). The only crop treated by carbofuran in the watershed is corn, and all of that crop is assumed treated with carbofuran at the rate of 1 lb per acre. To the extent a drinking water plant drawing water from the reservoir normally treats the raw intake water with lime softening or activated carbon processes the finished water concentrations could be reduced from 60 to 100% with the resultant aPADs ranging from approximately 198% to 2,340% of the aPAD to 0% of the aPAD, respectively, at the 99.9th percentile of exposure.

As discussed in the previous sections, it is important to remember that carbofuran's aPAD is quite low, hence relatively low concentrations of carbofuran monitored or estimated in surface water can have a significant impact on the percent of the aPAD utilized. Thus, while the refined carbofuran water concentrations for the corn ''rescue'' treatment in the range of approximately 16.6 to 36.7 ppb are comparable to maximum peak concentrations reported in the monitoring studies, these concentrations can result in very significant exceedences of the aPAD for various age groups, primarily because carbofuran is inherently very toxic.

As noted, EPA's modeling indicates that while there is some mitigation value in the use of spray drift buffers, the loading to surface water is dominated by runoff even in semi-arid locations such as western Kansas, and the proposed mitigation measures do not substantially reduce exposure to carbofuran in surface water source drinking water systems.

It is important to note that spray drift calculations have been conducted assuming that certain BMPs were used during the aerial spray application. Those practices are ½ swath displacement windward, a 10 foot release, wind speed no greater than 10 mph, and a spray boom less than 75% of the aircraft's wing (Ref. 106). There is advisory language on the revised labels regarding wind speed (''Drift potential increases at wind speeds less the 3 mph (due to inversion potential) or more than 10 mph,'' and boom height (''setting the boom to the lowest height (if specified) which provides uniform coverage reduces the exposure of droplets to evaporation and wind.''). The boom width is specifically restricted (''the boom length should not exceed ¾ the wing or rotor length.''). There is no language on the label regarding swath displacement. While these ''best management practices'' are frequently used by aerial applicators, they are not used universally. To the extent these management practices are not used, EPA's assessment would underestimate the additional loading expected to result from spray drift.

Equally important is that EPA only assumed that the buffers would be effective in reducing spray drift from neighboring fields, rather than assuming that the buffers would be effective in preventing or mitigating field runoff. As explained in the proposed rule, EPA disagrees that these measures will be effective in reducing carbofuran's movement to surface water. The proposed buffers were for fields where

soils were considered to be highly erodible. Buffer widths varied, and were to be vegetated with ''crop, seeded with grass, or other suitable crop.'' In 2000, EPA participated in the development of a guidance document on how to reduce pesticide runoff using conservation buffers (Ref. 98). Results of this effort found that properly designed buffers can reduce runoff of weakly absorbed pesticides like carbofuran by increasing filtration so that the pesticide can be trapped and degraded in the buffer. However, it is of critical importance that sheet flow be maintained across the buffer in order for this to occur. To ensure sheet flow, buffers need to be specifically designed for that purpose and they must be well-maintained, as over time sediment trapped in the buffer causes flow to become more channelized and the buffer then becomes ineffective. The guidance concludes that un-maintained, un-vegetated buffers around water bodies, often referred to a 'setback,' are ineffective in reducing pesticide movement to surface water.

As discussed in Unit VII.C.2., FMC has criticized EPA's assessment for failing to account more fully for the percent of the crop likely to be treated in its modeling. In response to FMC's concerns, EPA performed a sensitivity analysis of an exposure assessment using a PCT in the watershed to determine the extent to which some consideration of this factor could meaningfully affect the outcome of the risk assessment. The registrant has at different times, suggested the application of a 5 or 10% crop treated factor based on county sales data. While substantial questions remain as to the support for these percentages for a given basin where carbofuran may be used, EPA used the upper figure for the purpose of conducting a sensitivity analysis. To be clear, this means that EPA assumed that 10% of the 46% of the watershed on which corn could be grown, would be treated with carbofuran, resulting in less than 5% of the watershed treated with carbofuran—an assumption that clearly underestimates exposures in many highly agricultural areas, such as Nebraska, and as discussed previously, requires several unrealistic assumptions. The results suggest that, even at levels below 10% crop treated, exposures from drinking water derived from surface waters can contribute significantly to the aggregate dietary risks, particularly for infants and children. For example, applying a 10% crop treated figure to the Nebraska corn scenario described above, in addition to the corn-PCA of 0.46 incorporated into that scenario, results in estimated exposures from water alone, ranging from 110% of the aPAD for children 6 to 12 years to 390% of the aPAD for infants, assuming water treatment processes do not affect concentrations in drinking water consumed. Details on the assessments EPA conducted for other crop scenarios, which showed higher contributions from drinking water, can be found in References 16, 17, and 84. Accordingly, these assessments suggest that EPA's use of PCA alone, rather than in conjunction with PCT, will not meaningfully affect the carbofuran risk assessment, as even if EPA were to apply an extremely low PCT, aggregate exposures would still exceed 100% of the aPAD.

In response to this sensitivity analysis, which had been presented in the proposed rule, FMC complained that EPA had failed to account in these analyses for the rapid nature of carbofuran's recovery. Or in other words, the commenter wanted EPA to both apply a PCT figure and conduct an Eating Occasion Analysis, claiming that this analysis would show that carbofuran ''passed.''

EPA disagrees that conducting the analysis the commenter suggests would be appropriate, or would provide any information on which EPA could properly rely to support a determination of safety. As previously explained, the available information and methodology does not allow EPA to generate PCT estimates with any degree of confidence, and certainly not with the ''reasonable certainty'' demanded by the statute. EPA conducted its analysis purely in an attempt to understand the extent to which its assumption of PCT affected the risk assessment conclusions. It is not necessary to gain an understanding of the PCT impact, to compound the uncertainty by adding assumptions about the reversibility of carbofuran's effects.

The commenter provided the results of their dietary assessment, in which they appear to have conducted the analysis suggested above, and reported that the aPAD for infants from aggregate exposures (*i.e.*, food + water) was 107.06%. As previously discussed, the commenter did not provide any of the underlying support documentation for these reported results, and EPA was unable to replicate them. However, in its efforts to replicate the commenter's analysis, the lowest aggregate exposure EPA was able to estimate for infants using the commenter's PCT and half-life inputs was 126% of the aPAD, a figure that, for reasons discussed subsequently, is certainly an underestimate of exposure. Further discussion of the Eating Occasion Analyses EPA conducted for carbofuran is presented in Unit VIII.E.1.d. and in Reference 112.

In conclusion, the large difference between concentrations seen in the monitoring data on the low side, and the simulation modeling on the high side, is an indication of the uncertainty in the assessment for surface-water source drinking water exposure. The majority of drinking water concentrations resulting from use of carbofuran are likely to be occurring at higher concentrations than those measured in most monitoring studies, but below those estimated with simulation modeling; however the exact values within the range obtained from the monitoring and the model simulations are uncertain. However, the monitoring data show a consistent pattern of low concentrations, with the occasional, infrequent spike of high concentrations. Those infrequent high concentrations are consistent with EPA's modeling, which is intended to capture the exposure peaks. For a chemical with an acute risk, like carbofuran, the spikes or peaks in exposures, even though infrequent, are the most relevant for assessing the risks. And, as previously noted, the available monitoring has its own limitations for estimating exposure for risk assessment.

Further, the results of the modeling analyses provide critical insights regarding locations in the country where the potential for carbofuran contamination to surface water and associated drinking water sources is more likely. These locations include areas with soils prone to runoff (such as those high in clay or containing restrictive layers), in regions with intensive agriculture with crops on which carbofuran is used (*e.g.*, corn), which have high rainfall amounts and/or are subject to intense storm events in the spring around the times applications are being made. Drinking water facilities with small basins tend to be more vulnerable, as it is more likely that a large proportion of the crop acreage will be treated in small basins.

3. *Aggregate dietary exposures (food and drinking water)*. EPA conducted a number of probabilistic analyses to combine the national food exposures with the exposures from the individual region and crop-specific drinking water scenarios. As discussed in Unit V.B.3., although food is distributed nationally, and residue values are therefore not expected to vary substantially throughout the country, drinking water is locally derived and concentrations of pesticides in source water fluctuate over

time and location for a variety of reasons. Consequently, EPA conducted several estimates of aggregate dietary risks by combining exposures from food and drinking water. These estimates showed that, because drinking water exposures from any of the crops on the label exceed safe levels, aggregate exposures from food and water are unsafe. Although EPA's assessments showed that, based on the Idaho potato scenarios, exposures from ground water from use on potatoes would be safe, surface water exposures from carbofuran use on potatoes far exceed the safety standard. More details on the individual aggregate assessments presented below, as well as the assessments EPA conducted for other regional and crop scenarios, can be found in References 16 and 17.

Table 5 reflects the results of aggregate exposures from food and from drinking water derived from ground water in extremely vulnerable areas (*i.e.*, from shallow wells associated with sandy soils and acidic aquifers, such as are found in Wisconsin). The estimates range between 780% of the aPAD for adults, to 9,400% of the aPAD for infants.

TABLE 5.—RESULTS OF ACUTE DIETARY (FOOD AND WATER) EXPOSURE ANALYSIS INCORPORATING THE WISCONSIN GROUND WATER SCENARIO pH 6.5

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.001602	2,100	0.003537	4,700	0.007053	9,400
Children 1–2 years old	0.000075	0.000680	910	0.001490	2,000	0.003180	4,200
Children 3–5 years old	0.000075	0.000626	840	0.001350	1,800	0.002845	3,800
Children 6–12 years old	0.000075	0.000432	580	0.000935	1,200	0.002019	2,700
Youth 13–19 years old	0.0002	0.000334	170	0.000751	380	0.001721	860
Adults 20–49 years old	0.0002	0.000415	210	0.000896	450	0.001906	950
Adults 50+ years old	0.0002	0.000415	210	0.000853	430	0.001552	780

The peak concentration estimates in the Wisconsin ground water scenario time series are consistent with monitoring data from wells in vulnerable areas where carbofuran was used. For example, the maximum water concentration from the time series is 34 ppb while maximum values from a targeted ground water monitoring study in Maryland, with a higher application rate, was 65 ppb, with studies at other sites having similar or higher peak concentrations (Refs. 17 and 84). For studies with multiple measurements at each well, central tendency estimates were also in the same range as the time series. For example, the mean carbofuran concentration from wells under no-till agriculture in Queenstown, MD was 7 ppb, while the median for the modeling was 15.5 ppb. The 90–day average concentration, based on the registrant's PGW study conducted on corn in the Delmarva (adjusted for current maximum application rates) is 11 ppb.

Table 6 presents the results of aggregate exposure from food and water derived from one of the least conservative surface water scenarios: Kansas sunflower, with two foliar applications. This table reflects the risks only for those people in watersheds with characteristics similar to that used in the scenario, and assuming that water treatment does not remove carbofuran. As discussed previously, the estimated water concentrations are comparable to the maximum peak concentrations reported in monitoring studies that were not designed to detect peak, daily concentrations of carbofuran in vulnerable locations.

TABLE 6.—RESULTS OF ACUTE DIETARY (FOOD AND WATER) EXPOSURE ANALYSIS USING THE DEEM-FCID(TM) AND INCORPORATING THE KANSAS SURFACE WATER SUNFLOWER FOLIAR APPLICATION pH 7.8 SCENARIO

Population Subgroup	aPAD (mg/kg/day)	95th Percentile		99th Percentile		99.9th Percentile	
		Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD	Exposure (mg/kg/day)	% aPAD
All Infants (< 1 year old)	0.000075	0.000087	120	0.000425	570	0.001555	2100
Children 1–2 years old	0.000075	0.000044	59	0.000185	250	0.000660	880
Children 3–5 years old	0.000075	0.000039	53	0.000172	230	0.000610	800
Children 6–12 years old	0.000075	0.000027	36	0.000117	160	0.000416	560
Youth 13–19 years old	0.0002	0.000019	10	0.000089	45	0.000330	160
Adults 20–49 years old	0.0002	0.000026	13	0.000114	57	0.000395	200
Adults 50+ years old	0.0002	0.000028	14	0.000119	60	0.000373	190

More details on this assessment, as well as the assessments EPA conducted for other crop scenarios, can be found in References 16, 61, and 84. For example, in the proposed rule, EPA presented the results from aggregate exposures resulting from a Nebraska surface water scenario based on a Nebraska corn rootworm ''rescue treatment.'' Estimated exposures from that scenario ranged from 330% of the aPAD for youths 13 to 19 years to 3,900% of the aPAD for infants.

As noted previously, EPA's food and water exposure assessments typically sum exposures over a 24–hour period, and EPA used this 24–hour total in developing its acute dietary risk assessment for carbofuran. Because of the rapid nature of carbofuran toxicity and recovery, EPA considered durations of exposure less than 24 hours. Accordingly, EPA has conducted an analysis using information about dietary exposure, timing of exposure within a day, and half-life of AChE inhibition from rats to estimate risk to carbofuran at durations less than 24 hours. Specifically, EPA has evaluated individual eating and drinking occasions and used the AChE half-life to recovery information (herein called half-life information) to estimate the residual effects from carbofuran from previous exposures within the day. The carbofuran analyses are described in the 2009 aggregate (dietary) memo (Ref. 71).

EPA used the same approach for considering the impact of carbofuran's rapid reversibility on exposure estimates in the food and drinking water risk assessments that had been previously used in the cumulative risk assessment of the NMC pesticides and/or risk assessments for other NMC pesticides (*e.g.*, methomyl and aldicarb) (Ref. 107).

Using the two FMC time course studies in rat pups, EPA calculated half-lives for recovery of 186 and 426 minutes. The two values were derived from two different studies using rat pups of the same age (Refs. 30 and 31); the two values provide an indication that half-lives to recovery can vary among juvenile rats. By extension, children are expected to vary in their ability to recover from AChE inhibition where longer recoveries would be associated with a potentially higher ''persisting dose'' (as described below). Incorporating Eating Occasion Analysis and the 186–minute or 426–minute recovery half-lives for carbofuran into the food only analysis does not significantly change the risk estimates when compared to baseline levels (for which a total daily consumption basis – and not eating occasion - was used). From this, it is apparent that modifying the analysis such that information on eating (*i.e.*, food) occasions and carbofuran half-life is incorporated results in only minor reductions in estimated risk from food alone.

Regarding drinking water exposure, accounting for drinking water consumption throughout the day and using the half-life to recovery information, risk is reduced by approximately 2-3X. Consequently, risk estimates for which food and drinking water are jointly considered and incorporated (*i.e.*, Food + Drinking Water) are also reduced considerably—by a factor of two or more in some cases—compared to baseline. This is not unexpected, as infants receive much of their exposures from indirect drinking water in the form of water used to prepare infant formula, as shown in the above example. But even though the risk estimates from aggregate exposure are reduced, they nonetheless still substantially exceed EPA's level of concern for infants and children. Using drinking water derived from the surface water from the Idaho potato surface water scenario, which estimated one of the lowest exposure distributions, aggregate exposures at the 99.9th percentile ranged from 328% of the aPAD under the scenario for which infants rapidly metabolize carbofuran (*e.g.*, 186 minute half-life), to a high of 473% of the aPAD under the scenario for which infants metabolize carbofuran more slowly, (*e.g.*, scenarios in which a 426 minute half life is assumed).

Moreover, even accounting for the estimated decreased risk from accounting for carbofuran's rapid reversibility, the Agency remains concerned about the risks from single eating or drinking events, as illustrated in the following example, based on an actual food consumption diary from the CSFII survey. A 4–month old male non-nursing infant weighing 10 kg is reported to have consumed a total of 1,070 milliters (ml) of indirect water over eight different occasions during the day. The first eating occasion occurred at 6:30 a.m., when this 4 month old consumed 8 fluid ounces of formula prepared from powder. The FCID food recipes indicate that this particular food item consists of approximately 87.7% water, and therefore, 8 ounces of formula contains approximately 214 ml (or grams) of indirect water; with the powder (various nutrients, dairy, soy, oils, etc.) accounting for the remaining 12.3%. This infant also reportedly consumed a full 8–ounce bottle of formula at 12 p.m., 4 p.m., and 8 p.m. that day. The food diary also indicates that the infant consumed about 1 tablespoon of water (14.8 ml) added to prepare rice cereal at 10:00 a.m., about 2 ounces of water (59.3 ml) added to pear juice at 11 a.m., another ½ tsp of water (2.5 ml) to prepare more rice cereal at 8:30 p.m.; and finally, he consumed another 4 ounces of formula (107 ml) at 9:30 p.m.

The infant's total daily water intake (1,070 ml, or approximately 107 ml/kg/day) is not overly conservative, and represents substantially less than the 90th percentile value from CSFII on a ml water/kg bodyweight (ml/kg/bw) basis. As noted, carbofuran has been detected in finished water at concentrations of 4 ppb. For this 10 kg body weight infant, an 8–ounce bottle of formula prepared from water containing carbofuran at 4 ppb leads to drinking water exposures of 0.0856 micrograms of active ingredient/kilogram of bodyweight (µg ai/kg bw), or 114% of the aPAD. Based on the total daily water intake of 1,070 ml/day (no reversibility), total daily exposures from water at 4 ppb concentration would amount to 0.4158 µg ai/kg bw, or 555% of the aPAD; this is the amount that would be used for this person-day in the Total Daily Approach.

Peak inhibition occurs following each occasion on which the infant consumed 8 fluid ounces of formula (6 a.m., 12 p.m., 4 p.m. and 8 p.m.); however, the maximum persisting dose occurs following the 9:30 p.m. eating occasion, based on a 186–minute half-life parameter. This produces a maximum persisting dose of 0.1457 µg ai/kg bw, or about 30% of the total daily exposure of 0.4158 µg ai/kg bw derived above, or expressed as a fraction of the level of concern, the maximum persisting dose amounts to about 194% of the aPAD (or 30% of 554%). Note that with drinking water concentration at 4 ppb, an infant consuming one 8 oz bottle of formula - prepared from powder and tap water containing carbofuran at 4 ppb will obtain exposures of approximately 114% of aPAD. Since many infants consume the equivalent of this amount on a single eating occasion, accounting for reversibility over multiple occasions is not essential to ascertain that infants quite likely have obtained drinking water exposures to carbofuran exceeding the level of concern based on drinking water concentrations found in public drinking water supplies.

The approach discussed above is used to evaluate the extent to which the Agency's 24–hour approach to dietary risk assessment overestimates risk from carbofuran exposure. The results of both approaches indicate that the risk from carbofuran is indeed not substantively overestimated using the current

exposure models and the 24–hour approach.

In this regard, it is important to note EPA's Eating Occasion Analyses underestimate exposures to the extent that they do not take into account carry-over effects from previous days, and because drinking water concentrations are randomly picked from the entire 30–year distribution. As discussed previously, DEEM-FCID(TM) is a single day dietary exposure model, and the DEEM-based Eating Occasion Analysis accounts for reversibility within each simulated person-day. All of the empirical data regarding time and amounts consumed (and corresponding exposures based on the corresponding residues) from the CSFII survey are used, along with the half-life to assess an equivalent persisting dose that produced the peak inhibition expected over the course of that day. This is a reasonable assumption for food alone; since the time between exposure events across 2 days is relatively high (compared to the half-life)—most children (>9 months) tend to sleep through the night—and the time between dinner and breakfast the following morning is long enough it is reasonable to ''ignore'' persisting effects from the previous day. A single day exposure model will underestimate the persisting effects from drinking water exposures (formula) among infants, and newborns in particular (<3 months), since newborns tend to wake up every 2 to 4 hours to feed. Any carry over effects may be important, especially if exposures from the previous day are relatively high, since the time between the last feeding (formula) of the day and the first feeding of the subsequent day is short. A single day model also does not account for the effect of seasonal variations in drinking water concentrations, which will make this effect more pronounced during the high use season (*i.e.*, the time of year when drinking water concentrations are high). Based on these analyses, the Agency concludes that the current exposure assessment methods used in the carbofuran dietary assessment provide realistic and high confidence estimates of risk to carbofuran exposure through food and water.

The result of all of these analyses clearly demonstrates that aggregate exposure from all uses of carbofuran fail to meet the FFDCA section 408 safety standard, and revocation of the associated tolerances is warranted. EPA's analyses show that those individuals–both adults as well as children—who receive their drinking water from vulnerable sources are also exposed to levels that exceed EPA's level of concern—in some cases by orders of magnitude. This primarily includes those populations consuming drinking water from ground water from shallow wells in acidic aquifers overlaid with sandy soils that have had crops treated with carbofuran. It could also include those populations that obtain their drinking water from reservoirs located in small agricultural watersheds, prone to runoff, and predominated by crops that are treated with carbofuran, although there is more uncertainty associated with these exposure estimates.

Although the recent cancellation of several registered uses has reduced the dietary risks to children, EPA's analyses still show that estimated exposures significantly exceed EPA's level of concern for children.

While the registrant claims to have conducted an alternate analysis showing that aggregate carbofuran exposures to children will be safe, FMC failed to provide the data and details of that assessment to the Agency. They have also failed to provide several critical components that served to support key inputs into that assessment. And for several of these, EPA was unable to replicate the claimed results based on the information contained in the comments. In the absence of such critical components, the Agency cannot accept the validity or utility of the analyses, let alone rely on the results.

But based on the summary descriptions provided in their comments, it is clear that the commenters' analyses contain a critical flaw. The commenters' determination of safety rests on the presumption that under real world conditions, events will always occur exactly as hypothesized by the multiple assumptions in their assessment. For example, they assume, despite all available evidence to the contrary, that children will not be appreciably more sensitive to carbofuran's effects than adults. They assume that carbofuran's effects will be highly reversible, and that children will be uniformly sensitive, such that the effects will be adequately accounted for by the assumption of a 150–minute half-life. They further assume that there will be no carry over effect from the preceding day's exposures for infants. They assume that the cancellation of use on alfalfa will reduce carbofuran residues in milk by over 70%. They assume that residues will decrease between 19 and 23% as a result of the buffer requirements on the September 2008 label, even though the label does not require the use of all of the recommended ''best management practices'' (*e.g.*, no language regarding swath displacement), and applicators do not universally use such practices in the absence of any requirement. They assume that average ground water pH adequately characterizes the temporal and spatial heterogeneity common in most areas, despite the available evidence to the contrary. Finally, they assume that PCT in watersheds will never exceed 5% CT, despite varying pest pressures, consultant recommendations, and individual grower decisions. Leaving aside that EPA believes most, if not all of these assumptions are not supported by the available evidence, as described throughout this final rule, the probability of all these assumptions always simultaneously holding true under real world conditions is unreasonably low, and certainly does not approach the degree of certainty necessary for EPA to conclude that children's exposures will be safe.

Determining whether residues will be safe for U.S. children is not a theoretical paper exercise; it cannot suffice to hypothesize a unique set of circumstances that make residues ''fit in the box.'' There must be a reasonable certainty that under the variability that exists under real world conditions, exposures will be ''safe.'' EPA's assessments incorporate a certain degree of conservatism precisely to account for the fact that assumptions must be made that may not prove accurate. This consideration is highly relevant for carbofuran, because as refined as EPA's assessments are, areas of uncertainty remain with regard to carbofuran's risk potential. For example, a recent epidemiological study reported that 45% of maternal and cord blood samples in a cohort of New York City residents of Northern Manhattan and the South Bronx between 2000 and 2004, contained low, but measurable residues of carbofuran (Ref. 118). The Agency is currently unable to account for the source of such sustained exposures at this frequency.

A further consideration is that the risks of concern are acute risks to children. For acute risks, the higher values in a probabilistic risk assessment are often driven by relatively high values in a few exposures rather than relatively lower values in a greater number of exposures. This is due to the fact that an acute assessment looks at a narrow window of exposure where there are unlikely to be a great variety of consumption sources. Thus, to the extent that there is a high exposure it will be more likely due to a high residue value in a single consumption event. Additionally worrisome in this regard is that carbofuran is a highly potent (*i.e.*,

has a very steep dose-response curve), acute toxicant, and therefore any aPAD exceedances are more likely to have greater significance in terms of the potential likelihood of actual harm.

In sum, these results strongly support EPA's conclusion that aggregate exposures to carbofuran are not safe.

IX. Procedural Matters

A. When Do These Actions Become Effective?

The revocations of the tolerances for all commodities will become effective December 31, 2009. EPA had proposed to establish an extended effective date for artichokes and sunflower seed; however, EPA ultimately agrees with those commenters who raised concern that continuance of use for an additional year on these crops would be inconsistent with the acute risks that carbofuran poses to children. Accordingly, the revocation for tolerances on these two crops will now be effective December 31, 2009. The Agency has set the effective date in December because this is the quickest time frame in which the decision could be practically implemented, given that some additional time will be necessary to allow the process applicable to stay requests to be completed. In addition, this time frame ensures that growers will have a reasonable amount of time to make reasoned decisions about their pest management strategies, and to exhaust any stocks of carbofuran currently in their possession.

Any commodities listed in this rule treated with the pesticide subject to this rule, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(l)(5). Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA, and

2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

B. Request for Stay of Effective Date

A person filing objections to this final rule may submit with the objections a petition to stay the effective date of this final rule. Such stay petitions must be received by the Hearing Clerk on or before July 14, 2009. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket Room. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this final rule, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay.

EPA received comments asserting that a hearing would definitely be requested, and requesting a stay pending resolution of that hearing.

Until EPA has published its final rule, any request for a stay is purely speculative. EPA is only authorized to issue a stay of the regulation, ''if after issuance of such regulation or order, objections are filed with respect to such regulation...'' 21 U.S.C. 346a(g)(1). No objections have been filed, nor could they be until EPA publishes its final rule. Further, no demonstration has yet been made that any hearing is warranted, nor indeed, could the commenters have done so at this stage of the tolerance revocation process. See, 40 CFR 178 Subpart B. EPA's regulations require all parties who request a stay to justify the request with a statement of the factual and legal grounds upon which the petitioner relies. To the extent the commenters still wish to seek a stay of EPA's final rule, they will have the opportunity to do so, as discussed above.

In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that:

(1) The petitioner will otherwise suffer irreparable injury;

(2) The petitioner's case is not frivolous and is being pursued in good faith;

(3) The petitioner has demonstrated sound public policy grounds supporting the stay;

(4) The delay resulting from the stay is not outweighed by public health or other public interests.

Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice.

Any person wishing to comment on any stay request may submit such comments and objections to a stay request to the Hearing Clerk, on or before July 29, 2009. Any subsequent decisions to stay the effect of this order, based on a stay request filed, will be published in the **Federal Register**, along with EPA's response to comments on the stay request.

X. Are The Agency's Actions Consistent With International Obligations?

The tolerance revocations in this final rule are not discriminatory and are designed to ensure that both domestically-produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents. EPA has developed guidance concerning submissions for import tolerance support (65 FR 35069, June 1, 2000) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select Regulations and Proposed Rules and then look up the entry for this document under ''**Federal Register**—Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

XI. Statutory and Executive Order Reviews

In this final rule, EPA is revoking specific tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted tolerance regulations from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled *Protection of Children from*

Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), which both apply to regulation actions reviewed under Executive Order 12866. This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this final rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). This final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this final rule.

The Regulatory Flexibility Act (RFA) 5 USC 601 et.seq, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute. This is required unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. The Agency has determined that no small organizations or small governmental jurisdictions are impacted by today's rulemaking. For purposes of assessing the impacts of today's determination on businesses, a small business is defined either by the number of employees or by the annual dollar amount of sales/revenues. The level at which an entity is considered small is determined for each North American Industry Classification System (NAICS) code by the Small Business Administration (SBA). Farms are classified under NAICS code 111, Crop Production, and the SBA defines small entities as farms with total annual sales of $750,000 or less.

The Agency has examined the potential effects today's final rule may have on potentially impacted small businesses. EPA prepared an analysis for the proposal and certified that its proposed rule would not have a significant economic impact on a substantial number of small entities. EPA received no comments on its analysis or certification. Based on its analysis, EPA concludes that the Agency can certify that revoking the food tolerances for carbofuran will not have a significant economic impact on a substantial number of small entities for alfalfa, artichoke, banana, chili pepper, coffee, cotton, cucurbits (cucumber, melons, pumpkin, and squash), grape, grains (barley, flax, oats, and wheat), field corn, potato, soybean, sorghum, sugarbeet, sugarcane, sunflower, and sweet corn. Even in a worst-case scenario, in which a grower obtains income only from a single crop and his/her entire acreage is affected, the impact generally amounts to less than 2% of gross income and would be felt by fewer than 3% of affected small producers. Estimates of impacts to corn growers were refined to account for the sporadic nature of need for carbofuran while still maintaining some assumptions that would bias the estimates upward. Refined estimates were also made for artichoke and sunflower, which consider the diversity in growers' revenue. The largest impact may be felt by artichoke growers, with impacts as high as 5% of gross revenue, but fewer than five growers are likely to be affected. Moreover, as the registrant has voluntarily cancelled the use of carbofuran on artichokes, any impact is more properly traced to the registrant's decision to cancel the registration, than to the revocation of the tolerance. EPA could not quantify the impacts to banana, sugarcane, and sweet corn producers, but the number of impacted farms is less than 2% of the farms subject to the action. Additional detail on the analyses EPA conducted in support of this certification can be found in Reference 85.

XII. Congressional Review Act

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

XIII. References

The following is a list of the documents that are specifically referenced in this final rule and placed in the docket that was established under Docket ID number EPA-HQ-OPP-2005-0162. The public docket includes information considered by EPA in developing this final rule, such as the documents specifically referenced in this action that are listed in this unit, documents that are referenced in the documents that are in the docket, any public comments received, and other information related to this action. For information on accessing the docket, refer to the **ADDRESSES** unit at the beginning of this document.

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List of Subjects in 40 CFR Part 180

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

Dated: May 11, 2009.

Debra Edwards,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.254 is amended by revising the tables in paragraphs (a) and (c) to read as follows:

§ 180.254 Carbofuran; tolerances for residues.

(a) * * *

Commodity	Parts per million (ppm)	Expiration/ Revocation date
Alfalfa, forage (of which no more than 5 ppm are carbamates)	10	12/31/09
Alfalfa, hay (of which no more than 20 ppm are carbamates)	40	12/31/09
Banana	0.1	12/31/09
Barley, grain (of which not more than 0.1 ppm is carbamates)	0.2	12/31/09
Barley, straw (of which no more than 1.0 ppm is carbamates)	5.0	12/31/09
Beet, sugar, roots	0.1	12/31/09
Beet, sugar, tops (of which no more than 1 ppm is carbamates)	2	12/31/09
Coffee, bean, green	0.1	12/31/09
Corn, forage (of which no more than 5 ppm are carbamates)	25	12/31/09
Corn, grain (including popcorn) (of which no more than 0.1 ppm is carbamates)	0.2	12/31/09
Corn, stover (of which no more than 5 ppm are carbamates)	25	12/31/09
Corn, sweet, kernel plus cob with husks removed (of which no more than 0.2 ppm is carbamates)	1.0	12/31/09
Cotton, undelinted seed (of which no more than 0.2 ppm is carbamates)	1.0	12/31/09
Cranberry (of which no more than 0.3 ppm is carbamates)	0.5	12/31/09
Cucumber (of which not more than 0.2 ppm is carbamates)	0.4	12/31/09
Grape (of which no more than 0.2 ppm is carbamates)	0.4	12/31/09
Grape, raisin (of which no more than 1.0 ppm is carbamate	2.0	12/31/09
Grape, raisin, waste (of which no more than 3.0 ppm is carbamates	6.0	12/31/09
Melon (of which not more than 0.2 ppm is carbamates)	0.4	12/31/09
Milk (of which no more than 0.02 ppm is carbamates)	0.1	12/31/09
Oat, grain (of which not more than 0.1 ppm is carbamates)	0.2	12/31/09
Oat, straw (of which not more than 1.0 ppm is carbamates)	5.0	12/31/09
Pepper (of which no more than 0.2 ppm is carbamates)	1	12/31/09
Potato (of which no more than 1 ppm is carbamates)	2	12/31/09
Pumpkin (of which not more than 0.6 ppm is carbamates)	0.8	12/31/09
Rice, grain	0.2	12/31/09
Rice, straw (of which no more than 0.2 ppm is carbamates)	1	12/31/09
Sorghum, forage (of which no more than 0.5 ppm is carbamates)	3	12/31/09
Sorghum, grain, grain	0.1	12/31/09
Sorghum, grain, stover (of which no more than 0.5 ppm is carbamates)	3	12/31/09
Strawberry (of which no more than 0.2 ppm is carbamates)	0.5	12/31/09
Soybean (of which not more than 0.2 ppm is carbamates)	1.0	12/31/09
Soybean, forage (of which not more than 20.0 ppm are carbamates)	35.0	12/31/09
Soybean, hay (of which not more than 20.0 ppm are carbamates)	35.0	12/31/09
Squash (of which not more than 0.6 ppm is carbamates)	0.8	12/31/09
Sugarcane, cane	0.1	12/31/09
Sunflower, seed (of which not more than 0.5 ppm is carbamates)	1.0	12/31/09
Wheat, grain (of which not more than 0.1 ppm is carbamates)	0.2	12/31/09
Wheat, straw (of which not more than 1.0 ppm is carbamates)	5.0	12/31/09

* * * * *

(c) * * *

Commodity	Parts per million (ppm)	Expiration/ Revocation date
Artichoke, globe (of which not more than 0.2 ppm is carbamates)	0.4	12/31/09

* * * * *

[FR Doc. E9–11396 Filed 5–12–09; 4:15 pm]
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Federal Register

Friday,
May 15, 2009

Part IV

The President

Executive Order 13508—Chesapeake Bay Protection and Restoration

Federal Register
Vol. 74, No. 93
Friday, May 15, 2009

Presidential Documents

Title 3—

The President

Executive Order 13508 of May 12, 2009

Chesapeake Bay Protection and Restoration

By the authority vested in me as President by the Constitution and the laws of the United States of America and in furtherance of the purposes of the Clean Water Act of 1972, as amended (33 U.S.C. 1251 *et seq.*), and other laws, and to protect and restore the health, heritage, natural resources, and social and economic value of the Nation's largest estuarine ecosystem and the natural sustainability of its watershed, it is hereby ordered as follows:

PART 1—PREAMBLE

The Chesapeake Bay is a national treasure constituting the largest estuary in the United States and one of the largest and most biologically productive estuaries in the world. The Federal Government has nationally significant assets in the Chesapeake Bay and its watershed in the form of public lands, facilities, military installations, parks, forests, wildlife refuges, monuments, and museums.

Despite significant efforts by Federal, State, and local governments and other interested parties, water pollution in the Chesapeake Bay prevents the attainment of existing State water quality standards and the ''fishable and swimmable'' goals of the Clean Water Act. At the current level and scope of pollution control within the Chesapeake Bay's watershed, restoration of the Chesapeake Bay is not expected for many years. The pollutants that are largely responsible for pollution of the Chesapeake Bay are nutrients, in the form of nitrogen and phosphorus, and sediment. These pollutants come from many sources, including sewage treatment plants, city streets, development sites, agricultural operations, and deposition from the air onto the waters of the Chesapeake Bay and the lands of the watershed.

Restoration of the health of the Chesapeake Bay will require a renewed commitment to controlling pollution from all sources as well as protecting and restoring habitat and living resources, conserving lands, and improving management of natural resources, all of which contribute to improved water quality and ecosystem health. The Federal Government should lead this effort. Executive departments and agencies (agencies), working in collaboration, can use their expertise and resources to contribute significantly to improving the health of the Chesapeake Bay. Progress in restoring the Chesapeake Bay also will depend on the support of State and local governments, the enterprise of the private sector, and the stewardship provided to the Chesapeake Bay by all the people who make this region their home.

PART 2—SHARED FEDERAL LEADERSHIP, PLANNING, AND ACCOUNTABILITY

Sec. 201. *Federal Leadership Committee.* In order to begin a new era of shared Federal leadership with respect to the protection and restoration of the Chesapeake Bay, a Federal Leadership Committee (Committee) for the Chesapeake Bay is established to oversee the development and coordination of programs and activities, including data management and reporting, of agencies participating in protection and restoration of the Chesapeake Bay. The Committee shall manage the development of strategies and program plans for the watershed and ecosystem of the Chesapeake Bay and oversee their implementation. The Committee shall be chaired by the Administrator of the Environmental Protection Agency (EPA), or the Administrator's designee, and include senior representatives of the Departments of Agriculture

(USDA), Commerce (DOC), Defense (DOD), Homeland Security (DHS), the Interior (DOI), Transportation (DOT), and such other agencies as determined by the Committee. Representatives serving on the Committee shall be officers of the United States.

Sec. 202. *Reports on Key Challenges to Protecting and Restoring the Chesapeake Bay.* Within 120 days from the date of this order, the agencies identified in this section as the lead agencies shall prepare and submit draft reports to the Committee making recommendations for accomplishing the following steps to protect and restore the Chesapeake Bay:

(a) define the next generation of tools and actions to restore water quality in the Chesapeake Bay and describe the changes to be made to regulations, programs, and policies to implement these actions;

(b) target resources to better protect the Chesapeake Bay and its tributary waters, including resources under the Food Security Act of 1985 as amended, the Clean Water Act, and other laws;

(c) strengthen storm water management practices at Federal facilities and on Federal lands within the Chesapeake Bay watershed and develop storm water best practices guidance;

(d) assess the impacts of a changing climate on the Chesapeake Bay and develop a strategy for adapting natural resource programs and public infrastructure to the impacts of a changing climate on water quality and living resources of the Chesapeake Bay watershed;

(e) expand public access to waters and open spaces of the Chesapeake Bay and its tributaries from Federal lands and conserve landscapes and ecosystems of the Chesapeake Bay watershed;

(f) strengthen scientific support for decisionmaking to restore the Chesapeake Bay and its watershed, including expanded environmental research and monitoring and observing systems; and

(g) develop focused and coordinated habitat and research activities that protect and restore living resources and water quality of the Chesapeake Bay and its watershed.

The EPA shall be the lead agency for subsection (a) of this section and the development of the storm water best practices guide under subsection (c). The USDA shall be the lead agency for subsection (b). The DOD shall lead on storm water management practices at Federal facilities and on Federal lands under subsection (c). The DOI and the DOC shall share the lead on subsections (d), (f), and (g), and the DOI shall be lead on subsection (e). The lead agencies shall provide final reports to the Committee within 180 days of the date of this order.

Sec. 203. *Strategy for Protecting and Restoring the Chesapeake Bay.* The Committee shall prepare and publish a strategy for coordinated implementation of existing programs and projects to guide efforts to protect and restore the Chesapeake Bay. The strategy shall, to the extent permitted by law:

(a) define environmental goals for the Chesapeake Bay and describe milestones for making progress toward attainment of these goals;

(b) identify key measureable indicators of environmental condition and changes that are critical to effective Federal leadership;

(c) describe the specific programs and strategies to be implemented, including the programs and strategies described in draft reports developed under section 202 of this order;

(d) identify the mechanisms that will assure that governmental and other activities, including data collection and distribution, are coordinated and effective, relying on existing mechanisms where appropriate; and

(e) describe a process for the implementation of adaptive management principles, including a periodic evaluation of protection and restoration activities.

The Committee shall review the draft reports submitted by lead agencies under section 202 of this order and, in consultation with relevant State agencies, suggest appropriate revisions to the agency that provided the draft report. It shall then integrate these reports into a coordinated strategy for restoration and protection of the Chesapeake Bay consistent with the requirements of this order. Together with the final reports prepared by the lead agencies, the draft strategy shall be published for public review and comment within 180 days of the date of this order and a final strategy shall be published within 1 year. To the extent practicable and authorized under their existing authorities, agencies may begin implementing core elements of restoration and protection programs and strategies, in consultation with the Committee, as soon as possible and prior to release of a final strategy.

Sec. 204. *Collaboration with State Partners.* In preparing the reports under section 202 and the strategy under section 203, the lead agencies and the Committee shall consult extensively with the States of Virginia, Maryland, Pennsylvania, West Virginia, New York, and Delaware and the District of Columbia. The goal of this consultation is to ensure that Federal actions to protect and restore the Chesapeake Bay are closely coordinated with actions by State and local agencies in the watershed and that the resources, authorities, and expertise of Federal, State, and local agencies are used as efficiently as possible for the benefit of the Chesapeake Bay's water quality and ecosystem and habitat health and viability.

Sec. 205. *Annual Action Plan and Progress Report.* Beginning in 2010, the Committee shall publish an annual Chesapeake Bay Action Plan (Action Plan) describing how Federal funding proposed in the President's Budget will be used to protect and restore the Chesapeake Bay during the upcoming fiscal year. This plan will be accompanied by an Annual Progress Report reviewing indicators of environmental conditions in the Chesapeake Bay, assessing implementation of the Action Plan during the preceding fiscal year, and recommending steps to improve progress in restoring and protecting the Chesapeake Bay. The Committee shall consult with stakeholders (including relevant State agencies) and members of the public in developing the Action Plan and Annual Progress Report.

Sec. 206. *Strengthen Accountability.* The Committee, in collaboration with State agencies, shall ensure that an independent evaluator periodically reports to the Committee on progress toward meeting the goals of this order. The Committee shall ensure that all program evaluation reports, including data on practice or system implementation and maintenance funded through agency programs, as appropriate, are made available to the public by posting on a website maintained by the Chair of the Committee.

PART 3—RESTORE CHESAPEAKE BAY WATER QUALITY

Sec. 301. *Water Pollution Control Strategies.* In preparing the report required by subsection 202(a) of this order, the Administrator of the EPA (Administrator) shall, after consulting with appropriate State agencies, examine how to make full use of its authorities under the Clean Water Act to protect and restore the Chesapeake Bay and its tributary waters and, as appropriate, shall consider revising any guidance and regulations. The Administrator shall identify pollution control strategies and actions authorized by the EPA's existing authorities to restore the Chesapeake Bay that:

(a) establish a clear path to meeting, as expeditiously as practicable, water quality and environmental restoration goals for the Chesapeake Bay;

(b) are based on sound science and reflect adaptive management principles;

(c) are performance oriented and publicly accountable;

(d) apply innovative and cost-effective pollution control measures;

(e) can be replicated in efforts to protect other bodies of water, where appropriate; and

(f) build on the strengths and expertise of Federal, State, and local governments, the private sector, and citizen organizations.

Sec. 302. *Elements of EPA Reports.* The strategies and actions identified by the Administrator of the EPA in preparing the report under subsection 202(a) shall include, to the extent permitted by law:

(a) using Clean Water Act tools, including strengthening existing permit programs and extending coverage where appropriate;

(b) establishing new, minimum standards of performance where appropriate, including:

(i) establishing a schedule for the implementation of key actions in cooperation with States, local governments, and others;

(ii) constructing watershed-based frameworks that assign pollution reduction responsibilities to pollution sources and maximize the reliability and cost-effectiveness of pollution reduction programs; and

(iii) implementing a compliance and enforcement strategy.

PART 4—AGRICULTURAL PRACTICES TO PROTECT THE CHESAPEAKE BAY

Sec. 401. In developing recommendations for focusing resources to protect the Chesapeake Bay in the report required by subsection 202(b) of this order, the Secretary of Agriculture shall, as appropriate, concentrate the USDA's working lands and land retirement programs within priority watersheds in counties in the Chesapeake Bay watershed. These programs should apply priority conservation practices that most efficiently reduce nutrient and sediment loads to the Chesapeake Bay, as identified by USDA and EPA data and scientific analysis. The Secretary of Agriculture shall work with State agriculture and conservation agencies in developing the report.

PART 5—REDUCE WATER POLLUTION FROM FEDERAL LANDS AND FACILITIES

Sec. 501. Agencies with land, facilities, or installation management responsibilities affecting ten or more acres within the watershed of the Chesapeake Bay shall, as expeditiously as practicable and to the extent permitted by law, implement land management practices to protect the Chesapeake Bay and its tributary waters consistent with the report required by section 202 of this order and as described in guidance published by the EPA under section 502.

Sec. 502. The Administrator of the EPA shall, within 1 year of the date of this order and after consulting with the Committee and providing for public review and comment, publish guidance for Federal land management in the Chesapeake Bay watershed describing proven, cost-effective tools and practices that reduce water pollution, including practices that are available for use by Federal agencies.

PART 6—PROTECT CHESAPEAKE BAY AS THE CLIMATE CHANGES

Sec. 601. The Secretaries of Commerce and the Interior shall, to the extent permitted by law, organize and conduct research and scientific assessments to support development of the strategy to adapt to climate change impacts on the Chesapeake Bay watershed as required in section 202 of this order and to evaluate the impacts of climate change on the Chesapeake Bay in future years. Such research should include assessment of:

(a) the impact of sea level rise on the aquatic ecosystem of the Chesapeake Bay, including nutrient and sediment load contributions from stream banks and shorelines;

(b) the impacts of increasing temperature, acidity, and salinity levels of waters in the Chesapeake Bay;

(c) the impacts of changing rainfall levels and changes in rainfall intensity on water quality and aquatic life;

(d) potential impacts of climate change on fish, wildlife, and their habitats in the Chesapeake Bay and its watershed; and

(e) potential impacts of more severe storms on Chesapeake Bay resources.

PART 7—EXPAND PUBLIC ACCESS TO THE CHESAPEAKE BAY AND CONSERVE LANDSCAPES AND ECOSYSTEMS

Sec. 701. (a) Agencies participating in the Committee shall assist the Secretary of the Interior in development of the report addressing expanded public access to the waters of the Chesapeake Bay and conservation of landscapes and ecosystems required in subsection 202(e) of this order by providing to the Secretary:

(i) a list and description of existing sites on agency lands and facilities where public access to the Chesapeake Bay or its tributary waters is offered;

(ii) a description of options for expanding public access at these agency sites;

(iii) a description of agency sites where new opportunities for public access might be provided;

(iv) a description of safety and national security issues related to expanded public access to Department of Defense installations;

(v) a description of landscapes and ecosystems in the Chesapeake Bay watershed that merit recognition for their historical, cultural, ecological, or scientific values; and

(vi) options for conserving these landscapes and ecosystems.

(b) In developing the report addressing expanded public access on agency lands to the waters of the Chesapeake Bay and options for conserving landscapes and ecosystems in the Chesapeake Bay, as required in subsection 202(e) of this order, the Secretary of the Interior shall coordinate any recommendations with State and local agencies in the watershed and programs such as the Captain John Smith Chesapeake National Historic Trail, the Chesapeake Bay Gateways and Watertrails Network, and the Star-Spangled Banner National Historic Trail.

PART 8—MONITORING AND DECISION SUPPORT FOR ECOSYSTEM MANAGEMENT

Sec. 801. The Secretaries of Commerce and the Interior shall, to the extent permitted by law, organize and conduct their monitoring, research, and scientific assessments to support decisionmaking for the Chesapeake Bay ecosystem and to develop the report addressing strengthening environmental monitoring of the Chesapeake Bay and its watershed required in section 202 of this order. This report will assess existing monitoring programs and gaps in data collection, and shall also include the following topics:

(a) the health of fish and wildlife in the Chesapeake Bay watershed;

(b) factors affecting changes in water quality and habitat conditions; and

(c) using adaptive management to plan, monitor, evaluate, and adjust environmental management actions.

PART 9—LIVING RESOURCES PROTECTION AND RESTORATION

Sec. 901. The Secretaries of Commerce and the Interior shall, to the extent permitted by law, identify and prioritize critical living resources of the Chesapeake Bay and its watershed, conduct collaborative research and habitat protection activities that address expected outcomes for these species, and develop a report addressing these topics as required in section 202 of this order. The Secretaries of Commerce and the Interior shall coordinate agency activities related to living resources in estuarine waters to ensure maximum benefit to the Chesapeake Bay resources.

PART 10—EXCEPTIONS

Sec. 1001. The heads of agencies may authorize exceptions to this order, in the following circumstances:

(a) during time of war or national emergency;

(b) when necessary for reasons of national security;

(c) during emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution; or

(d) in any case that constitutes a danger to human life or a real threat to vessels, aircraft, platforms, or other man-made structures at sea, such as cases of *force majeure* caused by stress of weather or other act of God.

PART 11—GENERAL PROVISIONS

Sec. 1101. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) authority granted by law to a department, agency, or the head thereof; or

(ii) functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
May 12, 2009.

[FR Doc. E9–11547
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Billing code 3195–W9–P

Federal Register

Friday,
May 15, 2009

Part V

The President

Proclamation 8379—Jewish American Heritage Month, 2009

Federal Register
Vol. 74, No. 93
Friday, May 15, 2009

Presidential Documents

Title 3—

The President

Proclamation 8379 of May 12, 2009

Jewish American Heritage Month, 2009

By the President of the United States of America

A Proclamation

The Jewish American tradition exemplifies the strength of the American immigrant tradition. Since Jews arrived in New Amsterdam in 1654, Jewish Americans have maintained a unique identity just as they have enmeshed themselves in the fabric of the United States. This month we celebrate this inspiring and unifying narrative.

Jewish Americans across the United States practice the faith and celebrate the culture of their ancestors. Across the Nation every day, individuals emulate their forebears by seeking to perform mitzvot, the hundreds of commandments set forth in the Torah. The term ''mitzvah'' has come to mean ''good deed,'' and many Jews have adopted these practices to serve their communities. Other mitzvot include observing holidays, such as Passover, which marks the exodus from Egypt; and Yom Kippur, a time to contemplate and seek forgiveness for the sins of the past year; and Shabbat, the weekly day of rest.

The focus on preserving traditions is a notable characteristic of Jewish culture. Many Jewish religious and cultural practices have developed and adapted over the millennia, yet the fundamental exhortation to ensure that long-cherished ways of life are passed on to future generations remains as strong as ever before. Many Jewish Americans carry on this belief as they instill these traditions in their children.

Seeking to preserve their culture and start anew, Jewish immigrants have departed familiar lands to pursue their own American dreams for more than 300 years. During some periods, Jews sought refuge in the United States from the horrors and tragedies of persecution, pogroms, and the Holocaust. During other times, they came to seek better lives and greater economic opportunities for themselves and their children.

Jewish Americans have immeasurably enriched our Nation. Unyielding in the face of hardship and tenacious in following their dreams, Jewish Americans have surmounted the challenges that every immigrant group faces, and have made unparalleled contributions. Many have broken new ground in the arts and sciences. Jewish American leaders have been essential to all branches and levels of government. Still more Jewish Americans have made selfless sacrifices in our Armed Forces. The United States would not be the country we know without the achievements of Jewish Americans.

Among the greatest contributions of the Jewish American community, however, is the example they have set for all Americans. They have demonstrated that Americans can choose to maintain cultural traditions while honoring the principles and beliefs that bind them together as Americans. Jewish American history demonstrates how America's diversity enriches and strengthens us all.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim May 2009 as Jewish American Heritage Month. I call upon all Americans to commemorate the proud heritage of Jewish Americans with appropriate ceremonies and activities.

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

[FR Doc. E9–11587
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Federal Register

Vol. 74, No. 93

Friday, May 15, 2009

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Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
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Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, MAY

20201–20404 1
20405–20558 4
20559–20864 5
20865–21244 6
21245–21532 7
21533–21766 8
21767–22088 11
22089–22416 12
22417–22636 13
22637–22818 14
22819–23108 15

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8366 20403
8367 20861
8368 20863
8369 21241
8370 21243
8371 21527
8372 21529
8373 22085
8374 22089
8375 22417
8376 22419
8377 22815
8378 22817
8379 23107

Executive Orders:
13508 23099

Administrative Orders:
Memorandums:
Memo. of May 1, 2009 20865
Memo. of May 5, 2009 21531
Memo. of April 30, 2009 22637

5 CFR

532 ..... 20405, 22421

Proposed Rules:
300 21771

7 CFR

1487 22089
1755 20559

Proposed Rules:
301 22318
305 22318
318 22318
319 22318
330 22318
352 22318
930 22112
983 20630

9 CFR

93 22090

Proposed Rules:
201 22841

10 CFR

Proposed Rules:
37 20235
600 20427

12 CFR

41 22639
222 22639
229 21245
334 22639
571 22639
717 22639

Proposed Rules:
226 20784
227 20804
535 20804
706 20804
913 22842
925 22848
1204 22842
1263 22848
1282 20236
1702 22842

13 CFR

121 20577

Proposed Rules:
313 20647
315 20647

14 CFR

25 ..... 21533, 22819
39 ..... 20580, 20867, 21246, 21249, 21251, 21254, 21544, 22091, 22422, 22424, 22426, 22429, 22432, 22435, 22646
47 22819
61 ..... 22649, 22819
63 ..... 22649, 22819
65 ..... 22649, 22819
71 ..... 20410, 20867, 20868, 20869, 22093, 22820, 22821
73 20201
91 ..... 20202, 22649
97 ..... 22668, 22670
120 22649
121 22649
135 ..... 20202, 22649

Proposed Rules:
25 20427
39 ..... 20431, 20659, 20661, 21274, 21278, 21281, 21284, 21285, 21561, 21772, 22123, 22125, 22127, 22712
71 20443
93 ..... 22714, 22717
135 20263
145 21287

15 CFR

774 20870

16 CFR

3 20205
4 20205
641 22639
680 22639
681 22639
698 22639

Proposed Rules:
425 22720

17 CFR

200 20411

230 21255
232 21255
239 21255
274 21255
Proposed Rules:
1 21290

19 CFR

361 22094

20 CFR

Proposed Rules:
404 21563
416 21563

21 CFR

510 ....20582, 21767, 21768, 22821
520 ....21767, 21768
522 20582
524 22821
589 20583
601 20583
Proposed Rules:
601 20663

22 CFR

215 20871

24 CFR

3500 22822

26 CFR

1 ....21256, 21438
20 21438
25 21438
Proposed Rules:
1 ....21295, 21519
20 21519
25 21519

29 CFR

4022 22826

30 CFR

938 21768

31 CFR

Proposed Rules:
103 22129

32 CFR

199 21547

33 CFR

100 ....21550, 22095, 22672
117 20585
165 ....20412, 20414, 20586, 20588, 21550, 22100, 22685, 22687, 22689, 22691, 22828, 22830
Proposed Rules:
100 22142
165 ....20270, 21564, 22722

34 CFR

668 20210
686 20210
690 20210
691 20210

36 CFR

Proposed Rules:
242 22867

38 CFR

3 ....21258, 22103
17 22832
38 20225
Proposed Rules:
21 21565
36 22145

39 CFR

111 22835
955 20590
3001 20834
3050 20834

40 CFR

51 22693
52 ....20599, 20601, 20872, 20874, 20877, 20880, 21550, 22693, 22837
63 22437
180 ....20883, 20887, 21260, 22456, 22460, 22464, 23046
239 20227
258 20227
271 22469
745 21554
Proposed Rules:
51 22147
52 ....20665, 20895, 20896, 20897, 21295, 21568, 21578, 21588, 21594, 21599, 21604, 22147
60 21136
63 ....21136, 22478
93 23024
180 22478
271 22490

42 CFR

Proposed Rules:
50 21610
412 21052
431 21232
433 21230
440 21232
441 21232
483 22208

44 CFR

64 21267
65 21271
Proposed Rules:
67 22151

45 CFR

Proposed Rules:
94 21610

46 CFR

2 20416
8 ....20416, 21554
189 20416

47 CFR

1 ....22104, 22696
2 22696
64 20892
73 ....20419, 20420, 20601, 20893, 22710
90 20602
95 22696
Proposed Rules:
1 21613
2 22491
73 ....20444, 20445, 22498
74 22498
95 22491

48 CFR

5 22810
25 22810
52 22810
501 21272
525 20894
537 20605
549 21272
552 ....20605, 20894, 21272
Proposed Rules:
52 20666

49 CFR

571 22348
585 22348
1002 20607
Proposed Rules:
571 20445

50 CFR

300 21194
402 20421
622 ....20229, 21558, 22476, 22710
648 ....20230, 20423, 20528, 21559
660 ....20610, 20620
679 22477
Proposed Rules:
17 ....21301, 21614, 22870
100 22867
222 20667
223 20667
300 21615
648 20448
660 20897
679 22507

LIST OF PUBLIC LAWS

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H.R. 586/P.L. 111–19

Civil Rights History Project Act of 2009 (May 12, 2009; 123 Stat. 1612)

Last List May 12, 2009

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